

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF NOVEMBER 25, 2011**

**PROVISIONAL MEASURES REGARDING
THE REPUBLIC OF ARGENTINA**

MATTER OF MILLACURA LLAIPÉN ET AL.

HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) of June 21, 2006, as well as the Orders of the Court of July 6, 2006 and February 6, 2008. In the latter the Court decided, *inter alia*:

1. [t]o reiterate to the State of Argentina to maint[ain] the measures adopted and to adopt all measures necessary to protect the right to life and physical integrity of María Leontina Millacura Llaipén, Marcos and Valeria Torres, Juan Pablo Caba, Gerardo Colín, Patricio Oliva, Tamara Bolívar, Miguel Ángel Sánchez, Silvia de los Santos, Verónica Heredia, and Viviana and Sonia Hayes, as well as of the granddaughters of María Leontina Millacura-Llaipén (daughters of Marcos and Valeria Torres), of Mrs Marcela Torres (“the wife of Marcos Torres”), of Alberto and Noelia Hayes, and of Luis Alberto Fajardo, taking into account the gravity of the situation and the specific risk circumstances[;]

2. [t]o require the State of Argentina to present in its next report an assessment of the risk situation of each of the beneficiaries of these measures, specifying the measures that ha[d] been implemented in conformity with this risk situation, pursuant to Considering clauses 7 to 9 of the [...] Order[;]

3. [t]o require the State of Argentina to specify in its next report the facts and circumstances that caused the death of Walter Mansilla, in conformity with Considering 13 of the [...] Order[;]

4. [t]o declare that in the instant proceedings regarding provisional measures it will not assess the effectiveness of the investigations of the facts that resulted in these measures, as this corresponds to an examination of the merits of the case under consideration by the Inter-American Commission on Human Rights[;]

5. [t]o dismiss the request for expansion of the provisional measures to Cristian Gamín, Iván Eladio Torres, Miguel Antonio Gallardo, Mauricio Agüero, Luis Alberto Alcaína and Diego Álvarez, in conformity with Considering clauses 21 to 23 of the [...] Order[, and]

6. [t]o require the State of Argentina to coordinate with the representatives and beneficiaries of the measures to assess the adequate mechanisms for effective protection of the right to life and integrity of the beneficiaries, in conformity with Considering 9 of the [...] Order.

[...]

2. The briefs of May 12, 14 and 19, September 17, November 24, and December 23, 2008; March 11 and November 26, 2009; October 21 and December 3, 2010, and February 7, April 13, May 2, June 10, July 28 and August 26, 2011, whereby the Republic of Argentina (hereinafter “the State” or “Argentina”) reported on the implementation of the instant provisional measures. In the aforementioned briefs of

* Pursuant to Article 19(1) of the Rules of Procedure of the Inter-American Court Judge Leonardo A. Franco, of Argentinean nationality, did not participate in the deliberation and signing of the instant Order.

May 12 and 14, 2008, the State referred to the death of Walter Mansilla. In the briefs of April 13, May 2, and June 10, 2011, it provided information on the death of Juan Pablo Caba (*infra* Having Seen 3 and 5). In addition, through the aforementioned briefs of March 11 and November 26, 2009, as well as the briefs of September 21, 2009, and April 12, 2010, the State asked that the measures be lifted. Also, through the briefs of February 1, 2010 and February 7, 2011, the State submitted its observations on the requests for expansion of the provisional measures filed by the representatives (*infra* Having Seen 3). In the February 1, 2010, brief, the State also made reference to the death of Mr. Juan Pablo Caba (*infra* Having Seen 3 and 5).

3. The representatives' briefs of July 1 and 4 and October 29, 2008; January 22 and April 21, 2009, and January 2, 2010, whereby they presented their comments on the reports submitted by the State (*supra* Having Seen 2). Through the aforementioned briefs of October 29, 2008; January 22 and April 21, 2009; and January 2, 2010, the representatives requested the creation of an "Executive Work Team", and in the brief of January 2, 2010, they requested the broadening of the instant provisional measures. In addition, in the representatives' communications of March 25, April 15 and October 20, 2008; August 24, 2009; January 14, March 9, April 13, June 17, July 2, and November 12 and 23, 2010; and February 18, April 7 and 15, May 7, and August 11 and 21, 2011, they submitted additional information to the Court regarding these provisional measures. Also, in the communications of February 18 and April 7, 2011, the representatives informed the Court of their representation of the beneficiaries of these measures. In a second communication dated April 7, 2011, the representatives reported the death of Juan Pablo Caba (*supra* Having Seen 2 and *infra* Having Seen 5). In addition, in the aforementioned communications of March 9 and November 12, 2010, and February 18, April 15 and August 11, 2011, the representatives requested the broadening of these provisional measures. Also, in the communications dated July 16, 2008 and April 17 and 27, 2009, the representatives requested that a hearing be held on the implementation of the instant measures.

4. The briefs of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") of April 1, August 26 and November 24, 2008; May 26, 2009; January 15 and December 3, 2010, and May 27 and August 25, 2011, whereby the representatives presented their observations on the information submitted by the State and the representatives (*supra* Having Seen 2 and 3). Through the briefs of May 26, 2009, and January 15, 2010, the Commission addressed the State's request to lift the provisional measures (*supra* Having Seen 2), while in the latter brief and the brief dated December 3, 2010, it addressed to the requests for broadening of measures made by the representatives (*supra* Having Seen 3).

5. The note from the Secretariat of the Court (hereinafter "the Secretariat") of April 23, 2008, whereby it asked the State to submit a report including, *inter alia*, an assessment of the risk situation of each of the beneficiaries of these measures, specifying the actions implemented pursuant to with these situations of risk, as well as an accurate description of the facts and circumstances leading to the death of Walter Mansilla (*supra* Having Seen 1). In addition, the Secretariat's notes of March 18 and 29, 2011, whereby they asked the representatives to submit updated information regarding each of the beneficiaries "as relating to the instant provisional measures." In this last note it also communicated that the representatives had in the context of the case of *Torres Millacura et al. v. Argentina* submitted information on the death of Mr. Juan Pablo Caba, beneficiary of the instant provisional measures. It asked the State to

submit information in this regard. Through a note from the Secretariat dated April 18, 2011 the State was given until the 29th of that same month and year to submit complete information on the alleged death of Mr. Caba. The note confirmed that the brief presented by the representatives on April 15, 2011, did not refer to all of the beneficiaries of these measures (*supra* Having Seen 3).

CONSIDERING THAT:

1. Argentina has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since September 5, 1984, and that pursuant to Article 62 thereof, it recognized the obligatory jurisdiction of the Court in the same ratification document.

2. Article 63(2) of the Convention requires that for the Court to order the adoption of provisional measures, three conditions must be met: 1) "extreme gravity"; ii) "urgency", and iii) that they be "necessary to avoid irreparable damage to persons." These three conditions coexist and must be present in all situations for which the Court's intervention is requested. In addition, the three conditions described must persist for the Court to maintain the ordered protection. If one of them is no longer valid, the Court shall reevaluate the continued with the ordered protection.¹

3. Based on its authority to determine its own competence, in its settled case law the Court has interpreted Article 63(2) of the American Convention to mean that it can order provisional measures at any stage of the proceedings. This has allowed the Tribunal to order this type of measure or to order that such measures remain in force even when it has already issued a judgment on the merits and ordered the corresponding reparations, and when the Court is monitoring compliance of those reparations, given that the case remains before the Tribunal until the State complies fully with the ruling. The exercise of this competence of the Court is concordant with the precautionary and protective nature of provisional measures², something that has allowed the Tribunal to guarantee the protection of the most fundamental of human rights, including the rights to life, personal integrity, and personal liberty. Were it not to order this type of safeguard while supervising compliance with a judgment on the merits and reparations pursuant to the full extent of the provisions of Article 63(2) of the Convention, the Court would be failing to comply with its mandate to "avoid irreparable damage" to persons.

4. Based on its jurisdiction, and within the framework of provisional measures, the Court shall only consider those claims that are strictly and directly related to extreme gravity, urgency, and the need to avoid irreparable damage to persons. Consequently, in order to decide whether to maintain the provisional measures in

¹ Cf. *Case of Carpio Nicolle*. Provisional Measures regarding Guatemala. Order of the Court of July 6, 2009, Considering 14, and *Case of Wong Ho Wing*. Provisional Measures regarding Peru. Order of the Court of October 10, 2011, Considering 3.

² In International Human Rights Law, provisional measures are not solely precautionary, in the sense that they preserve the legal situation. Rather they are fundamentally tutelary, in that they protect human rights by seeking to prevent irreparable damage to persons. The measures are applicable as long as they meet the basic requirements of extreme gravity and urgency and prevention of irreparable damage to persons. In this way, provisional measures become a true jurisdictional guarantee of a preventative nature. Cf. *Case of the Newspaper "La Nación"*. Provisional Measures regarding Costa Rica. Order of the Court of September 7, 2001, Considering 4; and *Matter of the Unidad de Internación Socioeducativa*. Provisional Measures regarding Brazil. Order of the Court of September 1, 2011, Considering 4.

effect, the Court must analyze whether the situation of extreme gravity and urgency that led to their adoption persists, or if there are new equally grave and urgent circumstances that justify the maintenance of these measures.³

5. In the Order of February 6, 2008 (*supra* Having Seen 1), the Court ruled that in the instant proceedings on provisional measures, it will not assess the effectiveness of the investigations of the facts that led to their adoption, given that this analysis corresponds to the examination of the merits of the case that was being processed before the Inter-American Commission at the time. On April 18, 2010, the Commission filed a petition against the State, pursuant to articles 51 and 61 of the Convention, in connection with the case of *Torres Millacura et al. v. Argentina*,⁴ and the Court ruled on this case on August 26, 2011. Regarding this, the parties provided information in their briefs (*supra* Having Seen 2 to 4) on the investigations into the forced disappearance of Iván Eladio Torres Millacura. Based on the foregoing, the Court reiterates that in the instant Order it will not rule on the investigation of the facts that led to the adoption of these provisional measures.

A. Adoption of the measures necessary to protect the life and personal integrity of the beneficiaries (first operative paragraph of the Order of February 6, 2008) and request to lift the measures

6. The Court observes that in the briefs of March 11, September 21, and November 26, 2009; and April 12, 2010 (*supra* Having Seen 2), the State requested the lifting of these provisional measures given that “no facts have emerged over a long period of time in relation to the instant case that would put the physical integrity or life of the persons that are beneficiaries thereof at risk.” In its subsequent reports, the State did not reiterate this request.

7. In order to maintain the provisional measures, the proven situation of extreme gravity and urgency and the need to avoid irreparable damage to persons must persist and be directly related to the facts that prompted the adoption of the provisional measures in the instant case. Consequently, when the Court requests information to assess the maintenance of these measures, the information provided must be adequately confirmed and well-founded.⁵ The Court has also indicated that provisional measures are exceptional and refer to a specific temporary situation, and that due to their nature they cannot continue indefinitely.⁶ The fact that there are no new threats may in fact be due to the effectiveness of the protection provided or deterrent effect of the Court’s Order. Nevertheless, the Court has found that the passage of a

³ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 29, 1998, Considering 6; *Case of Wong Ho Wing.* Provisional Measures regarding Peru, *supra* footnote 1, Considering 4.

⁴ Cf. *Case of Torres Millacura et al. v. Argentina. Merits, Reparations and Costs.* Judgment of August 26, 2011. Series C No. 229, para. 1.

⁵ Cf. *Case of the Constitutional Court.* Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of March 14, 2001, Considering 4, and *Case of Gutiérrez Soler* Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of June 30, 2011, Considering 21.

⁶ Cf. *Matter of the Jiguamiandó and Curbaradó communities.* Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of August 30, 2010, Considering 70, and *Case of Gutiérrez Soler.* Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of June 30, 2011, Considering 21.

reasonable period of time without threats or intimidation, in addition to the lack of an imminent risk, may lead to the lifting of the provisional measures.⁷

8. In this regard, the Court highlights that on multiple occasions it asked the parties, and most recently the representatives, to provide updated information on each of the beneficiaries of the instant measures (*supra* Having Seen 1 and 5). Consequently, in order to assess the implementation of measures and determine the need to maintain them, or to lift them, the Court will analyze the information submitted by the representatives and by the State regarding the current situation of the beneficiaries, as well as their comments and the Commission's comments in this regard.

A.1) Beneficiaries whose situation has not been duly reported to the Court since the Order of February 6, 2008

9. With regard to the beneficiaries Marcela Hernández ("wife of Marcos Torres"), Alberto Hayes, Noelia Hayes, Luis Alberto Fajardo, Silvia de los Santos⁸ and Verónica Heredia, the Court observes that it does not have information on specific facts that have emerged since the issue of the Order of February 6, 2008, demonstrating that they are in a situation of extreme gravity and urgency and risk of irreparable damage to life or personal integrity. In addition, the Tribunal verifies that in response to the Court's requests for updated information regarding each of the beneficiaries, the representatives did not refer to the situation of the aforementioned individuals (*supra* Having Seen 5).

10. Regarding the beneficiaries Viviana Hayes, Sonia Hayes, Patricio Oliva and Gerardo Colín, the Court observed that although the representatives referred to them in their response to the Tribunal's request for updated information (*supra* Having Seen 5), this brief and those previously presented by the representatives do not mention them, specifically recent ones, to be able to confirm the persistence of the situation of extreme gravity and urgency and risk of suffering irreparable damages which prompted the provisional measures ordered in their favor.⁹ The same is inferred from the briefs presented by the Commission.

11. In view of the lack of elements that would allow the Court to assess the situation of these individuals, and given that almost four years have elapsed since the last Order issued by the Court in the instant case, and given that the representatives

⁷ Cf. *Matter of Gallardo Rodriguez*. Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of July 11, 2007, Considering 11, and *Case of Gutiérrez Soler*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of June 30, 2011, Considering 21.

⁸ Ms. Silvia de los Santos is no longer the representative of the beneficiaries of the instant provisional measures. Cf. Representatives' briefs of February 18 and April 7, 2011 (case file on monitoring of compliance, volume xiii, pages 4909 y 4967).

⁹ Since the issue of the Order of February 6, 2008 (*supra* Having Seen 1), the parties have not recorded any specific facts to the detriment of Mr. Gerardo Colín, generally claiming that he "frequently suffer[s] police harassment." In addition, the only incident against the Hayes family allegedly occurred in June 2009, when Ms. Sonia de Hayes found that the door to her house had been forced. One cannot infer from the information provided by the representatives that this incident was related to the investigations being carried out regarding the forced disappearance of Iván Eladio Torres Millacura. It also cannot be inferred from the information provided that the sole specific incident that occurred to the detriment of Mr. Patricio Oliva, which took place in 2009, was related to these investigations. The representatives claim that at that time, two policemen "from Chubut Province [went] to [Mr. Oliva's] house and repeatedly and aggressively threatened him, warning that "he should take care of himself."

have not presented information confirming the persistence of a situation of extreme gravity and urgency and the risk of irreparable damage to persons, the Tribunal deems it appropriate to lift the provisional measures ordered in favor of Marcela Hernández (“wife of Marcos Torres”), Alberto Hayes, Noelia Hayes, Luis Alberto Fajardo, Silvia de los Santos, Verónica Heredia, Viviana Hayes, Sonia Hayes, Patricio Oliva and Gerardo Colín. Without detriment to the above, if the three conditions established in Article 63(2) of the American Convention are met again in the future, the Court may order provisional measures at that time.

12. Without detriment to the Court’s decision, it must be reiterated that Article 1(1) of the Convention establishes the general obligation of States Parties to respect the rights and freedoms contemplated therein and to guarantee their free and full exercise to all persons subject to its jurisdiction, at all times. Consequently, independently of the existence of specific provisional measures,¹⁰ the State is obligated to guarantee the rights of the aforementioned persons.

A.2) Situation of María Leontina Millacura Llaipén, her children Marcos and Valeria Torres, and her granddaughters Ivana and Romina Torres and Evelyn Paola Caba.

13. In the brief of July 28, 2011, the State reported that since January 21, 2005, the personnel at the Argentinean Naval Prefecture have provided 24-hour guard services at the home of Ms. Millacura Llaipen, where she currently lives with her daughter Valeria, her son Marcos Torres, and her granddaughters, Ivana and Romina Torres and Evelyn Caba. In addition, in contrast to what Ms. Millacura Llaipen and Mr. Marcos Torres have accepted,¹¹ since May 16, 2005, the abovementioned persons have had cell phones “with direct lines of communication for whenever they are needed [...].” According to the State, Ms. Millacura Llaipen refused this protective measure.

14. For their part, subsequent to the issuing of the Order of February 6, 2008, the representatives reported alleged threats made by police authorities in 2008 and 2009 against Ms. María Leontina Millacura Llaipén.¹² They also mentioned certain problems that Ms. Millacura Llaipen faced with police officers as well as officers of the Argentinean Naval Prefecture at her home in 2010.¹³ However, in response to the

¹⁰ Cf. *Matter of the Mendoza Penitentiaries*. Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of August 22, 2007, Considering 16, and *Matter of the Unidad de Internación Socioeducativa regarding Brazil*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of September 1, 2011, Considering 22.

¹¹ The State reported that Marcos Torres had also been given a cell phone. However, in the report of June 13, 2011, the Argentinean Naval Prefecture indicated that Marcos Torres was without “a mobile phone.”

¹² The representatives reported that in October 2008, Ms. Millacura Llaipén received death threats at the First Police Precinct of Comodoro Rivadavia while she was on a “hunger strike,” attempting to get her son back. They also reported that on August 20, 2009, Mr. Miguel Antonio Gallardo’s house was searched in the presence of Ms. Millacura Llaipen. According to the representatives, she was beaten and threatened with death by the authorities that conducted this search when she stated that she was the mother of Iván Eladio Torres.

¹³ For example, the representatives indicated that on June 10, 2010 “several Gendarmerie officers who did not identify themselves broke into the home [of Ms. Millacura Llaipen]” stating that they were

Tribunal's request for updated information on this beneficiary and her family (*supra* Having Seen 5), the representatives did not mention the current risk situation of those persons.¹⁴

15. The Commission indicated that "based on the information provided as part of the instant measures, it can be inferred that María Millacura [Llaipén had...] recently been subjected to threats and harassments, without the State presenting sufficient information on her protection." It also indicated that, "as Ms. María Millacura [Llaipén] and her representative emphasized at the public hearing held on May 18, 2011, within the framework of the case [*Torres Millacura et al v. Argentina*], the family of [this beneficiary], including her granddaughters, son [and] daughter [...], have been exposed to harassment at the hands of the regional police force."

16. In this regard, in relation to Ms. Millacura Llaipén, her son and daughter and granddaughters, the representatives have not claimed any recent threats related to the events that prompted the instant measures, that is, as a result of the investigations on the forced disappearance of Iván Eladio Torres Millacura.¹⁵ The Court observes that according to the representatives, the last threatening event against Ms. Millacura Llaipén with these characteristics occurred in 2009 (*supra* Considering 9). From the information provided it cannot be inferred that the events which allegedly occurred in 2010, reported by the representatives, had any relation to the aforementioned investigation. Likewise, the representatives have not reported any possible recent threats against the children and granddaughters of Ms. Millacura Llaipén.

17. On the other hand, the Court observes that, as grounds for the maintenance of the instant measures, the Inter-American Commission pointed to Ms. Millacura Llaipén's statement and the claims made by her representatives during the public hearing of May 18, 2011, as part of the contentious case *Torres Millacura et al v. Argentina* (*supra* Considering 15). In this regard, the Tribunal recalls that the goal of the instant proceedings on provisional measures is different from the goal of a contentious case, both in regard to the procedural aspects as well as the assessment of the evidence and scope of the decisions.¹⁶ The proceedings on provisional measures have been conducted at the same time but separately from the case before the Commission and the Court.

transferring Ms. Tamara Bolivar to the home of Ms. Millacura Llaipen so that she could complete her "home arrest for preventive imprisonment." Additionally, they stated that in September and October 2010, officers of the First Police Precinct of Comodoro Rivadavia and of the Argentine Naval Prefecture entered Ms. Millacura Llaipen's home in order to serve legal notifications. According to the representatives, such notifications constitute a "deliberate violation of the [...] document dated August 9, 2006, signed as part of the instant provisional measures."

¹⁴ In their brief of April 15, 2011, the representatives referred only to the mourning that Ms. Millacura Llaipen and her family are experiencing over the loss of Mr. Juan Pablo Caba, as well as to the family's economic situation, the lack of medical coverage for Ms. Fabiola Valeria Torres, and to the fact that Ms. Millacura Llaipen's granddaughters live in constant fear. Through the brief of August 21, 2011, the representatives referred to the treatment that Ms. Millacura Llaipen received at the Federal Court of Comodoro Rivadavia when requesting information on the search for her son, Mr. Ivan Eladio Torres.

¹⁵ Cf. Matter of Millacura Llaipén *et al.* regarding Argentina. Order of the Court of July 6, 2006, Considering 8.

¹⁶ Cf. *Case of Rios et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009.* Series C No. 194, para. 58, and *Case of Torres et al. v. Argentina. Merits, Reparations and Costs, supra* footnote 4, para. 55.

18. The information provided by the parties is not sufficient to determine whether the risk to the personal integrity and lives of Ms. Millacura Llaipen and her family which prompted the instant provisional measures – which themselves originated from the investigation of the forced disappearance of Ivan Eladio Torres Millacura¹⁷ - still meets the requirements of extreme gravity and urgency to prevent irreparable damages. Nevertheless, in light of this close relationship, the Court deems it pertinent for the provisional measures to continue in effect for an additional period of at least six months in favor of Ms. Maria Leontina Millacura Llaipen, her son and daughter Marcos and Valeria Torres, and her granddaughters, Ivana and Romina Torres and Evelyn Caba. However, in order to assess whether to maintain the provisional measures, the Tribunal deems it necessary for both the representatives and the State to submit accurate and detailed reports - including information on specific incidents along with the dates they took place when appropriate - on the possible current situation of risk faced by each of the mentioned beneficiaries, as well as the concrete actions conducted to implement said measures. These reports must substantiate the grounds to maintain or lift the measures in their favor, considering the reasons for which they were adopted.

A.3) Situation of Miguel Angel Sanchez.

19. With regard to Mr. Miguel Ángel Sánchez, the State sent a note dated June 23, 2011, signed by the Secretary of Human Rights of the Ministry of Justice and Human Rights and addressed to the Minister of Security of the Republic, where it stated that he “was on conditional release in the city of Rio Grande [...]” They inquired as to the “possibility of Mr. Miguel Angel Sanchez [...]receiving] the protection of [the] Argentinean Naval Prefecture in any of its forms.” According to the information provided by the State, Mr. Sanchez has apparently been on conditional release since May 19, 2010.¹⁸

20. The representatives indicated that Mr. Sanchez had been living with his mother in conditional release since May 19, 2010, in the city of Rio Grande, and that he “claims [to have been...] ‘followed’ by males, i.e. policemen, who were ‘watching’ him [to make sure that] he is meeting the conditions of his release.” They also pointed out that in the statement issued before a notary public on May 5, 2011, within the framework of the case of *Torres Millacura et al V. Argentina*,¹⁹ Mr. Sanchez gave his account of the “threats, broken windows, physical attacks and blows struck against the building where he [lives] with [his] mother [...]” The representatives provided a copy of said statement, whereby they asked the Court to request that the State send “Argentinean Naval Prefecture personnel [...] to Mr. Sanchez’ home [...] in order to protect his rights to psychological and physical integrity, and also to provide him with a cell phone with a direct line to specialized personnel at [the] Prefecture.”

¹⁷ Cf. *Matter of Millacura Llaipén et al.* Provisional Measures regarding Argentina, *supra* footnote 15, Considering 8.

¹⁸ Cf. Note from the Secretariat for the Protection of Human Rights with illegible date, addressed to the Minister of the Government of the Province of Chubut (monitoring of compliance case file, volume xiii, page 5206).

¹⁹ This statement was requested through the Order of the President of the Inter-American Court of April 29, 2011, issued as part of that case.

21. The Commission "observ[ed] with concern the grave threats received by Miguel Angel Sanchez, [...] who [...] continued to be the victim of police harassment." It indicated that "[i]n his affidavit in the case [*Torres Millacura et al*] Mr. Sanchez requested 'asylum' and appealed to the Court for his 'security, stability and integrity to preserve [his] life.' [...] In this regard, the [Commission] asked the Court to request that the State provide immediate protection for Mr. Sanchez, through personnel other than members of the regional or national police force."

22. The Court deems from the information provided by the parties that the State has not adopted any measures to protect the personal integrity and life of Mr. Miguel Angel Sanchez while he has been on conditional release. The Court also finds that according to the statement made by Mr. Sanchez before the notary public in of the case of *Torres Millacura et al*, provided by the representatives during the processing of the instant measures, which narrates the recent threats against said beneficiary (*supra* Considering 20), he could be at imminent risk of suffering irreparable damages to his life and personal integrity, specifically given his condition as a witness in aforementioned case.

23. Consequently, the State must adopt all measures necessary to protect the life and integrity of Mr. Miguel Angel Sanchez, and that these measures must remain in effect for a period of at least eight months. The Court calls to mind that these protective measures should be agreed on with the participation of the beneficiary or his representatives, and should also be implemented as soon as possible, making prompt collaboration toward this on the part of the representatives and the State particularly important (*infra* Considering 35).

24. Without detriment to this, and for the purposes of the adequate monitoring of the instant provisional measures, the Court requests that the parties submit up-to-date and detailed information on the situation of risk faced by Mr. Miguel Angel Sanchez, including specific facts, if relevant, as well as on the actions conducted to implement the measures ordered in his favor, and substantiating the need to maintain or, if appropriate, lift said measures.

A.4) The situation of Tamara Bolívar.

25. The State reported that "in the proceedings entitled 'Choque Trujillo Luis S/Pto. Robo Agravado R/Víctima Rawson,'" the Trelew Criminal Judge ordered in resolutions dated June 16, 17 and 18, 2010, that Ms. Tamara Bolivar be placed under house arrest in the home of Ms. María Leontina Millacura Llaipén and "under the responsibility" of the latter, "maintaining the house arrest [carried out by the Argentine Naval Prefecture] in the context of [these provisional] measures."

26. Therepresentatives reported that Ms. Bolívar "was deprived of liberty in a precinct in the city of Rawson[,] where she was brutally beaten, [...] tortured and/or sexually abused and/or subjected to cruel, inhuman and degrading punishment [...]." Regarding this, as an appendix dated June 17, 2010 (*supra* Having Seen 3), they submitted a recording in which Ms. Bolívar "described the incidents she experienced in recent months[,] carried out by police personnel of the Chubut Province[. She indicated that at least two police officers] told her that they were going to finish off Iván Torres[, that is,] disappear him." Likewise, the representatives indicated that after filing for a writ of *habeas corpus* to the benefit of the beneficiary, she was ordered to serve time in preventative detention "in the home of Ms. [Millacura

Llaipén...].” Additionally, they requested that Ms. Bolívar be included in a “Witness Protection Program, taking into account her situation of risk that arises from being both a witness and a person living in great poverty.” Finally, in response to a request from the Tribunal asking for updated information with regard to each beneficiary (*supra* Having Seen 5), the representatives indicated that, “according to Ms. [Millacura Llaipén, Ms. Tamara Bolívar] ‘is surviving.’”

27. The Commission argued that “although [...] no detailed information [with regard to Ms. Tamara Bolívar...] is available, this could be the result of the well-founded fear that she has of the regional authorities, especially the provincial police. Regarding this, the [Commission] highlight[ed] that, as expressed by expert witness Sofía Tiscornia during the public hearing [held in the case of *Torres Millacura et al.*], police abuse against impoverished young people such as the beneficiary in question is a common practice.” According to the Commission, “The fact that some witnesses to the facts [of the case in question...] have died under suspicious circumstances or continue to be threatened could be a factor that instills fear in [this beneficiary].”

28. The latest reports with regard to Ms. Tamara Bolívar date from the year 2010. For this reason, the Tribunal does not have information that would allow it to assess the current situation of risk of this beneficiary. Nevertheless, it also observes that in a recording submitted by the representatives in the month of June of that year, Ms. Bolívar told of the beatings and threats she was subjected to on being detained by two police officers, apparently from Trelew. According to the beneficiary, the aforementioned police officers warned her that “the same thing was going to happen to her [that happened to Iván Eladio Torres Millacura; that she was going...] to fall unconscious and have her hands burned, and no one, not even her mother, was going to recognize her [...].” Given the gravity of these threats, the Court finds it necessary to maintain these provisional measures in force to the benefit of Ms. Tamara Bolívar for an additional period of eight months. The Court asks that the parties, principally the representatives, provide updated and detailed information on the situation of risk faced by this beneficiary and regarding the implementation of the measures of protection ordered to her benefit in order that the Tribunal might be able to assess the appropriateness of maintaining the measures for an additional period of time, where necessary.

A.5) Deaths of Walter Mansilla and Juan Pablo Caba.

29. Regarding the death of beneficiary Walter Wansilla, the State indicated that the “Provincial Director of the Comodoro Rivadavia Program Area (under the Health Secretariat of the Chubut Province), [...] stated] in writing that on June 1, 2007, Walter Mansilla died in Hospital Alvear in that city [...] of ‘symptoms compatible with bilateral pneumonia and general sepsis, with significant signs of intoxication by alcohol and probably other drugs.’”²⁰ Regarding the death of Mr. Juan Pablo Caba, the State indicated that the beneficiary died on March 22, 2011, “as a result of a bullet wound” after being admitted to the Comodoro Rivadavia Regional Hospital and cared for there for 15 days. It also reported on the investigations being carried out by the Office of the Public Prosecutor into these facts, indicating that an autopsy was ordered the same day the beneficiary died and that “evidence is being gathered in order to

²⁰ The State submitted the medical history of Mr. Mansilla (case file of monitoring of compliance, volume x, page 3903).

determine [...] who committed the attack with the firearm." In previous briefs, the State did not report on any measures implemented to the benefit of Mr. Caba.

30. With regard to Mr. Mansilla, the representatives contested "the documentation presented by the Argentine State [...] without any impartial judicial oversight" and argued that the State "left Walter to his fate [,] guaranteeing his silence." With regard to Mr. Juan Pablo Caba, the representatives reported that the beneficiary checked into the Comodoro Rivadavia Regional Hospital on March 7, 2011. There, he expressed that "he was ambushed [...]." According to the representatives, Mr. Caba was interrogated in the hospital and died on March 22, 2011, after several operations. On the day of his death, "Valeria [Torres] saw [four] uniformed police officers" who said they had been sent by a judge. Ms. Millacura Llaipén demanded that the doctor on call give "the reasons for deciding to disconnect [Mr. Caba] from the respirator [...] without first communicating with his relatives."

31. The Commission stated that "the submission of information on [Mr. Mansilla] and the investigation pursued by the State to verify the cause of his death [was] of the highest importance." In addition, "it note[d] with concern the death of Juan Pablo Caba [...] under circumstances that have not yet been cleared up and [...] without protection at the moment the incidents took place. [...] The Commission awaits information from the State on the investigations opened into not only [the death of Mr. Caba] but also [with regard to] the allegations of the representatives regarding medical malpractice."

32. The Tribunal is saddened by the deaths of Mr. Mansilla and Mr. Caba. Although the information provided by the parties does not allow for the Court to determine whether the deaths of the beneficiaries were connected to the facts that led to the adoption of the instant provisional measures,²¹ the Tribunal highlights that at the time Mr. Caba was shot, the protective measures ordered previously by this Court to his benefit - which could have contributed to preventing this incident - were apparently not being effectively applied.

33. Without prejudice to this, in light of the deaths of Walter Mansilla and Juan Pablo Caba, the provisional measures ordered to their benefit are no longer in force.

B) Obligation to coordinate evaluation of the mechanisms of protection with the beneficiaries and their representatives (operative paragraph of the Order of February 6, 2008).

34. The State reported multiple times that the measures implemented for the beneficiaries had been implemented in agreement with them. In contrast, the representatives stated in the brief of May 7, 2011, that there has been a "total absence of dialogue with the State [...] since September 29, 2006." For its part, the Commission asked the Court to urge the State to allow the beneficiaries and their representatives to participate in the implementation of the provisional measures.

35. Regarding this, there is a discrepancy between the information submitted by the State and the representatives with regard to the implementation of this obligation. The Tribunal considers it pertinent to reiterate that in the Order of February 6, 2008,

²¹ Cf. *Matter of Millacura Llaipén et al.* Provisional Measures regarding Argentina, *supra* footnote 15, Considering 8.

the State was ordered to "evaluate all adequate mechanisms for the effective protection of the beneficiaries' rights to life and integrity in coordination with the representatives and beneficiaries of the measures [...]." This coordination is essential for the effective implementation of these measures. The Tribunal thus orders the parties - mainly the representatives and the State - to report in a timely and detailed fashion on this point. Likewise, they must submit evidence to the Tribunal that would allow it to verify if there has been coordination between them, such as possible meetings held between the representatives and the State or any other measure that both parties consider pertinent toward the State being able to comply with this order.

C) Requests to broaden the instant provisional measures.

C.1) Request to broaden the measures to the benefit of Iván Eladio Torres Millacura.

36. In briefs dated January 2 and November 12, 2010, and February 18, April 15, and August 11, 2011, the representatives asked that the Tribunal broaden the instant measures to the benefit of Iván Eladio Torres Millacura based on the following: a) in its report issued pursuant to Article 50 of the Convention, the Commission noted "the impunity surrounding [... the] disappearance [of Mr. Torres Millacura];" b) a court case was dismissed in which "Iván [Eladio Torres Millacura] and/or his relatives and friends were involved;" the case "was based on a beating [he] suffered in the First Police Precinct;" c) "individuals who carry out State functions are [supposedly] the perpetrators of the forced disappearance of [Mr. Torres Millacura];" d) on August 8, 2011, Ms. Millacura Llaipén met with Federal Public Prosecutor Norberto Belver; he informed her that "currently, no one is looking for Iván Eladio Torres [Millacura,] as he was only [...] sought when 'some information' was available;" and e) Mr. Torres Millacura is sought "in his capacity as a criminal and without any clear information [...] on how he is being sought [...] in his capacity as a forcibly disappeared person."

37. The State observed that the situation based on which the Court earlier dismissed the requests for the broadening of the instant measures to the benefit of Iván Eladio Torres Millacura has not changed. For its part, the Commission limited itself to observing that the time period established in Article 51 of the Convention for the presentation of a contentious case before the court expired on March 18, 2010.

38. Regarding this, through a judgment issued in the case of *Torres Millacura et al.*, the Court ordered the Argentine Republic to remove all obstacles of fact and law that keep what happened to Mr. Iván Eladio Torres Millacura in impunity and to launch all investigations that may be necessary to identify and, where appropriate, punish those responsible for the facts, and to do so within a reasonable period of time.²² In the Judgment, the Tribunal also ordered the State to continue the search for Mr. Torres Millacura, and in doing so to make all possible efforts as quickly as possible.²³ The wishes of the representatives have therefore already been taken into consideration by the Court in the aforementioned Judgment. Thus, the Tribunal rules that the request brought by the representatives to broaden the measures to the benefit of Iván Eladio Torres Millacura is inadmissible.

²² Cf. *Case of Torres Millacura et al. v. Argentina. Merits, Reparations and Costs*, *supra* footnote 4, para. 164.

²³ Cf. *Case of Torres Millacura et al. v. Argentina. Merits, Reparations and Costs*, *supra* footnote 4, para. 166.

C.2) Request to broaden the measures to the benefit of Saúl Soto and Daniel Cárcamo.

39. In their brief dated March 9, 2010, the representatives requested that these provisional measures be broadened to the benefit of Saúl Soto and Daniel Cárcamo, police officials who supposedly stated on the radio that Iván Eladio Torres Millacura was alive. The representatives indicated that "to date, [they] had not had personal contact with these individuals, but what they have said and what they may know [...] have put their lives at serious risk."

40. The State and the Commission did not specifically address this request.

41. As regards Mr. Soto and Mr. Cárcamo, the representatives did not provide an adequate basis for the *prima facie* existence of a situation of extreme gravity and urgency in which it would be necessary to prevent irreparable damage and that also is directly related with the facts on which the granting of provisional measures in this case was based.²⁴ Therefore, the Court dismisses the request to broaden the provisional measures to the benefit of Saúl Soto and Daniel Cárcamo.

C.3) Request to broaden the measures to the benefit of Luis Bolívar.

42. In briefs dated November 12, 2010, and February 18 and April 15, 2011, the representatives requested the broadening of these provisional measures to the benefit of Mr. Luis Bolívar. They argued that he was supposedly arrested on November 9, 2010 "by police personnel of the First Police Precinct," who supposedly "beat him, [threw] water over his body, and [...] applied] an electric current with 'a cattle prod' to his chest, [...] torso, [...] arms and [...] back. When he complained and said [...] that he was a witness in the case of Iván Torres [...], warning that he would tell Ms. Millacura Llaipén what was happening, supposedly] police officer Cocha [...] came out [...] and hit him in the face [...]." According to the representatives, the following day he was released. While he was in the First Precinct, Mr. Bolívar saw a picture of Iván Eladio Torres Millacura. A police officer hid the photo when he realized that Mr. Bolívar had seen it. In addition, the representative stated that Mr. Bolívar "testified before the Investigation Unit in 2004 and later before federal judge Eva Parcio in 2007 that he had been arrested several times by police officials, on several occasions together with Iván [Eladio Torres Millacura]."

43. The State did not make any specific reference to the representatives' request. For its part, the Commission indicated that the facts described by the representatives "and the request submitted with regard to Luis Alberto Bolívar deserved to be included in the instant provisional measures."

44. The facts described by the representatives meet the requirements of extreme gravity in that they could irreparably affect the rights to personal integrity and life of Luis Alberto Bolívar; nevertheless, this Court does not have sufficient evidence to verify whether Mr. Bolívar's situation is urgent, given that it has not received recent

²⁴ Cf. *Matter of Millacura Llaipén et al.* Provisional Measures regarding Argentina, *supra* footnote 15, Considering 8.

information on possible new incidents of threat or risk in addition to what apparently took place in November of 2010. Therefore, the Court finds it pertinent to ask the representatives and the State to report on the possible situation of risk faced by Mr. Bolivar, making reference where appropriate to specific facts that have taken place since November 2010 that would allow the Court to verify whether Mr. Bolivar is in a situation of extreme gravity and urgency and at risk of suffering irreparable damage to his life and personal integrity.

45. At the same time, the Tribunal finds it pertinent to recall that States have a constant and permanent duty to comply with their general obligations as set forth in Article 1(1) of the Convention to respect the rights and liberties enshrined in the Convention and to recognize and guarantee the free and full exercise of these rights for all individuals subject to their jurisdiction.²⁵ Likewise, in the Judgment handed down in the case of *Torres Millacura et al.*, the State was given the following order: "that the individuals participating in the investigation [into the facts that took place with regard to Mr. Torres Millacura] - among them, witnesses and relatives of the victims - be provided with all due guarantees of security."²⁶

D) Requests for hearing and for the formation of a "Executive Work Group."

46. Additionally, the representatives requested through briefs dated July 16, 2008, and April 17 and 27, 2009 (*supra* Having Seen 3), that a hearing be held in the context of the instant provisional measures. Likewise, in briefs dated October 29, 2008; January 22 and April 21, 2009; and January 2, 2010 (*supra* Having Seen 3), they requested the formation of an "Executive Work Group" composed of a Commissioner or Judge serving as rapporteur, "the petitioning party, the Argentine State, the Argentine Forensic Anthropology Corps, Alejandro Mejías Fonrouge, Eduardo Arizaga, and the Inter-American Institute of Human Rights, among other possible members." That "Group" would have its headquarters in Comodoro Rivadavia and would be funded by the State in order to "move forward in the design and implementation of [the instant] measures."

47. The State and the Commission did not address this request.

48. This Order clarifies the points on which there is disagreement with regard to the implementation and validity of the provisional measures. Therefore, the Tribunal does not find it necessary for the moment to hold a hearing in the context of the processing of the instant measures. In the same way, the implementation of the provisional measures in coordination with representatives constitutes a duty of the State. For this reason, the eventual forming of a "Executive Work Group" would be the State's decision.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

²⁵ Cf. *Case of Velásquez Rodríguez*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, Considering 3, and *Case of Wong Ho Wing*. Provisional Measures regarding Peru, *supra* footnote 1, Considering 11.

²⁶ Cf. *Case of Torres Millacura et al. v. Argentina. Merits, Reparations and Costs*, *supra* footnote 4, para. 164, b).

by way of the authority conferred by Article 63(2) of the American Convention on Human Rights and Article 27 of the Rules of Procedure of the Court,

DECIDES TO:

1. Lift the provisional measures to the benefit of Marcela Hernández (“wife of Marcos Torres”), Alberto Hayes, Noelia Hayes, Luis Alberto Fajardo, Silvia de los Santos, Verónica Heredia, Viviana Hayes, Sonia Hayes, Patricio Oliva and Gerardo Colín, Pursuant to Considering paragraphs 9 through 12 of this Order.
2. Rule that the provisional measures granted to the benefit of Juan Pablo Caba and Walter Mansilla are no longer in effect, pursuant to Considering paragraphs 29 through 33 of this Order.
3. Reiterate to the Argentine Republic that for a period of eight months, it must maintain the measures that have been adopted and adopt all others necessary in order to protect the rights to life and personal integrity of María Leontina Millacura Llaipén, her children, Marcos and Valeria Torres, and her granddaughters, Ivana and Romina Torres and Evelyn Caba, as well as of Tamara Bolívar and Miguel Ángel Sánchez, pursuant to Considering paragraphs 13 to 28 of this Order.
4. Dismiss the request to broaden the instant provisional measures to the benefit of Iván Eladio Torres, Saúl Soto and Daniel Cárcamo, pursuant to Considering paragraphs 36 to 41 of this Order.
5. Dismiss the requests for a hearing and for the formation of an “Executive Work Group,” pursuant to Considering paragraphs 46 to 48 of this Order.
6. Reiterate to the Argentine Republic that in coordination with the representatives and the beneficiaries of the measures, it must evaluate what mechanisms are adequate for effective protection of the right to life and integrity of the beneficiaries, pursuant to Considering paragraphs 34 and 35 of this Order.
7. Order the Argentine Republic to submit a detailed report to the Inter-American Court of Human Rights on the situation of risk faced by each of the beneficiaries of these provisional measures, as well as on the specific actions taken to implement the provisional measures, and to do so by March 2, 2012, at the latest, pursuant to Considering paragraphs 13 to 28, 34 and 35 of this Order. In that report, the State must report on the possible situation of risk faced by Mr. Luis Alberto Bolívar, pursuant to Considering paragraphs 42 through 45 of this Order. Subsequently, the State must report to the Inter-American Court of Human Rights every three months on the implementation of the instant measures.
8. Order the representatives of the beneficiaries of these measures and the Inter-American Commission on Human Rights to present their comments on the reports mentioned in the previous operative paragraph within four and six weeks, respectively, counting from the day on which they are notified of them.
9. Order the representatives of the beneficiaries of the provisional measures to submit a detailed report to the Inter-American Court of Human Rights on the situation of risk faced by each of the beneficiaries of these provisional measures, and on the possible situation of risk faced by Mr. Luis Alberto Bolívar, and to do so by March 2,

2012, at the latest, pursuant to Considering paragraphs 13 to 28, 34, 35 and 42 to 45 of this Order.

10. Order the Secretariat of the Court to notify the Argentine Republic, the Inter-American Commission on Human Rights and the beneficiaries of the provisional measures or their representative of this Order.

Judge Eduardo Vio Grossi informed the Court of his dissenting opinion, which accompanies this Order.

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

**DISSENTING OPINION OF JUDGE EDUARDO VIO GROSSI
REGARDING THE ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 25, 2011, ON PROVISIONAL MEASURES,
MATTER OF MILLACURA LLAIPÉN REGARDING ARGENTINA.**

The undersigned issues this opinion in dissent to the order indicated in the header (hereinafter the Order) in light of the fact that, having already issued the "definitive and inappealable ruling"¹ that has effectively put an end to the case in which the Inter-American Court of Human Rights (hereinafter the Court), while "hearing" it,² adopted the provisional measures to which this Order refers. The Court's jurisdiction with regard to the provisional measures has expired, and it now corresponds to the Court only to "supervise" compliance with the ruling.³

According to this reasoning, and on finding that the measures must extend beyond the ruling, what followed was to order in the judgment that the State was obligated to guarantee "to the injured party the enjoyment of the right or liberty violated."⁴ Logically, this also implies an obligation to adopt the measures pertinent to "prevent irreparable damage to persons"⁵ related with the case in question, a case which has been resolved and therefore is no longer "before" the Court. In this way, the measures would have been included in the aforementioned "definitive and inappealable ruling," in which case they would not only share their obligatory nature but in addition, compliance with them could have been monitored as part of monitoring of compliance and not, consequently, as if the case had not been definitively concluded or as if what was at issue were a separate and autonomous proceeding.

The more detailed basis for this position, which argues that the Court's strict respect for the rules that govern it is a *sine qua non* requirement for safeguarding human rights, is found both in the Dissenting Opinions on the same issue that the undersigned issued on July 15, 2011, with regard to the Orders of the Court related to "Provisional Measures with regard to the Republic of Colombia, case of Gutiérrez Soler v. Colombia" of June 30, 2011; "Provisional Measures regarding the United Mexican States, Case of Rosendo Cantú *et al.* v. Mexico" of July 1, 2011; and "Provisional Measures regarding the Republic of Honduras, Case of Kawas Fernández

¹Article 67 of the American Convention on Human Rights.

²Article 63(2), *idem*.

³Article 69 of the Rules of Procedure of the Court. See the concurring opinions of the undersigned to orders on Compliance with Judgments in the cases of *Blanco Romero et al. v. Venezuela*, *Servellón García et al. v. Honduras* and *Saramaka v. Suriname*, of November of 2011.

⁴Article 63(1) of the Convention.

⁵Art. 63(2), *idem*.

v. Honduras," of July 5, 2011; as well as in the brief, related with the same Orders, that was presented before the Court on August 17, 2011.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary