

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

**FEBRUARY 13, 2013**

**PROVISIONAL MEASURES REGARDING VENEZUELA**

**CASE OF THE BARRIOS FAMILY**

**HAVING SEEN:**

1. The Orders of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) issued on November 23, 2004, June 29 and September 22 2005, February 4 and November 25, 2010 and February 21 and July 5, 2011. In this last Order the Court stated that:

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

[And Decided]:

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

2. To maintain all other provisional measures ordered by the Inter-American Court of Human Rights in its Orders of November 23, 2004, June 29 and September 22, 2005, February 4 and November 25, 2010, and February 21, 2011.

3. To reiterate that the State must immediately and effectively adopt all the necessary and special measures, in addition to those already it has already adopted, to protect and guarantee the lives and personal integrity of the beneficiaries of the provisional measures, namely: Eloisa Barrios, Inés Barrios, Beatriz Barrios, Orismar Carolina Alzul García, Pablo Solórzano, Nestor Caudí Barrios, Jorge Barrios, Maritza Barrios, Roni Barrios, Roniex Barrios, Luis Alberto Barrios, Yelitza Lugo Pelaes, Arianna Nazaret Barrios, Oriana Zabaret Barrios, Víctor Cabrera Barrios, Beatriz Cabrera Barrios, Luimari Guzman Barrios, Luiseydi Guzman Barrios, Genesis Andreina Barrios, Víctor Tom[a]s Barrios, Geilin Alexandra Barrios, Elvira Barrios, Darelvis Barrios, Elvis Sarais Barrios, Cirilo Robert Barrios and Lorena Barrios. To that end, all sources of risk must be eradicated in order to prevent a repetition of facts such as the ones described.

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

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

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

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

2. The briefs of February 14, May 22, September 5 and December 5, 2012, in which the Bolivarian Republic of Venezuela (hereinafter "Venezuela" or "the State") submitted information on the implementation of the provisional measures, and requested the lifting of provisional measures in respect of some beneficiaries.

3. The briefs of December 20, 2011, March 30, May 15, June 4 and October 8, 2012, in which the representatives of the beneficiaries (hereinafter "the representatives") presented their observations to the State's reports and additional information regarding the situation of risk facing the beneficiaries of the provisional measures.

4. The brief of May 29, 2012, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented its observations to the information provided by the State and the representatives, regarding the implementation of these measures.

5. The briefs of October 8 and December 21, 2012, in which the representatives reported the presumed murders of Víctor Tomás Navarro Barrios and Jorge Antonio Barrios, both beneficiaries of these provisional measures .

6. The notes of the Secretariat of the Court (hereinafter "the Secretariat") of October 9 and 26, November 1 and 16, December 3 and 26, 2012, and January 14, 17 and 30, 2013, in which the President of the Court (hereinafter "the President") required the State to submit information on the death of those beneficiaries and the actions taken by the State in this regard.

7. The briefs of December 4, 2012 and of February 4, 2013, in which the State referred, among other things, to the death of the aforesaid beneficiaries and reported on some of the inquiries made in this regard, in response to the request of the President of the Court (*supra* Having Seen 5 and 6).

8. The briefs of the representatives of January 7 and February 7, 2013 and of the Commission of January 30, 2013, in which, *inter alia*, they presented their observations to the information provided by the State regarding the deaths of Víctor Tomás Navarro Barrios and Jorge Antonio Barrios (*supra* Having Seen 5 and 6).

## CONSIDERING THAT:

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

2. The Court has pointed out that provisional measures are not only preventive inasmuch as they preserve a juridical situation, but they are also essentially protective because they safeguard human rights, insofar as they seek to avoid irreparable damage to persons.<sup>1</sup> Regarding the preventive aspect, these measures have the object and purpose of preserving rights that are possibly at risk until the dispute is settled. They seek to ensure the integrity and effectiveness of the decision on the merits in order to avoid impairment of the rights in litigation, a situation that could nullify the practical effects of the final decision and render them useless. Provisional measures enable the State in litigation to comply with the final decision and, if applicable, implement the reparations ordered.<sup>2</sup>

3. Likewise, according to Article 63(2) of the Convention, the provisional measures ordered by the Court are binding on the State, because a basic principle of international law, supported by international case law, indicates that States must comply with their treaty-based obligations in good faith (*pacta sunt servanda*). Failure to comply with an order to adopt provisional measures issued by the Court during the proceeding before the Commission and before the Court may result in the international responsibility of the State.<sup>3</sup>

4. Within the framework of provisional measures, the Court can only consider the merits of arguments relating strictly and directly to the situation of extreme gravity and urgency and the need to avoid irreparable damage that led to their adoption persists, or whether new circumstances, which are equally grave and urgent, warrant keeping them in force. Any other issue may only be brought to the Court’s attention by means of a contentious case.<sup>4</sup>

5. According to the Orders of the Inter-American Court of November 23, 2004, June 29 and September 22, 2005, February 4, and November 25, 2010, and February 21 and July 5, 2011 (*supra* Having Seen 1), the State must, *inter alia*, protect the life and personal integrity of the beneficiaries<sup>5</sup>. Furthermore, through the Order of July 5, 2011, the Court required the State to adopt, immediately and effectively, all measures necessary and special, additional to those already adopted to protect and guarantee the life and personal integrity of the beneficiaries,

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<sup>1</sup> Cf. *Case of the newspaper “La Nacion”*. Provisional measures regarding Costa Rica. Order of the Court of September 7, 2001, Considering para. 4, and *Matter of Wong Ho Wing* Provisional Measures regarding Peru. Order of the acting President of the Court of December 6, 2012, Considering para. 5.

<sup>2</sup> Cf. *Matter of the El Rodeo II Judicial Confinement*. Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, Considering para. 7, and *Matter Wong Ho Wing*, Considering para. 5.

<sup>3</sup> Cf. *Case of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures regarding Colombia. Order of the Court of February 7, 2006, Considering para. 7, and *Matter Alvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the Court of November 23, 2012, Considering para. 2.

<sup>4</sup> Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of August 29, 1998, Considering paragraph 6, and *Matter Alvarado Reyes et al.*, Considering para. 4.

<sup>5</sup> Eloisa Barrios, Inés Barrios, Beatriz Barrios, Orismar Carolina Alzul García, Pablo Solórzano, Nestor Caudí Barrios, Jorge Barrios, Maritza Barrios, Roni Barrios, Roniex Barrios, Luis Alberto Barrios, Yelitza Lugo Pelaes, Arianna Nazaret Barrios, Oriana Zabaret Barrios, Víctor Cabrera Barrios, Beatriz Cabrera Barrios, Luimari Guzman Barrios, Luiseydi Guzman Barrios, Genesis Andreina Barrios, Víctor Tomas Barrios, Geillin Alexandra Barrios, Elvira Barrios, Darelvis Barrios, Elvis Sarais Barrios, Cirilo Robert Barrios and Lorena Barrios.

indicating that to do so it was necessary to eradicate the sources of risk and prevent the death of another beneficiary. Likewise, Venezuela was ordered to provide immediate and effective security to each of the beneficiaries of the measures, by means of permanent guard measures, as well as to the homes of Maritza Barrios and Orismar Carolina Alzul García, and to agree on more comprehensive provisional measures in the context of the dialogue between beneficiaries and the State.

6. Based on the information and the requests submitted by the parties, in this Order the Court shall address the following issues: (a) the request to lift the provisional measures ordered in favor of Yelitza Lugo Pelaes and Orismar Carolina Alzul García; (b) the request to lift the provisional measures ordered in favor of Nestor Caudi Barrios and Víctor Daniel Cabrera Barrios; (c) the facts related to the deaths of Víctor Tomás Navarro Barrios and Jorge Antonio Barrios, and the status of the implementation of the provisional measures regarding the rest of the beneficiaries, and d) the duty of the State to provide information.

*A) Regarding the request to lift the measures issued in favor of Yelitza Lugo Pelaes and Orismar Carolina Alzul García*

7. The State reported that during a hearing held on March 7, 2012 it was agreed to suspend the domestic measures of protection in favor of Yelitza Lugo Pelaes, Dalila Ortuño and Orismar Carolina Alzul and their respective families, "given that, as recorded in the transcripts of the interviews on the measures of protection, these persons expressly renounced these measures." The State provided a copy of the transcripts of those interviews, and indicated that they were carried out "in the presence of social workers and a psychologist attached to the Victims' Assistance Unit." Consequently, the State requested the "[l]ifting of provisional measures in favor of the citizens Yelitza Lugo Pelae[s], Dalila Ortuño and Orismar Carolina Alzul García, given their express renunciation of these."

8. For their part, the representatives alleged that, based on the statements taken at the interviews it appears that these "were conducted with the clear objective of securing the lifting of the provisional measures and not to learn about the situation of risk affecting [the beneficiaries] and their families." The representatives also provided a "sworn statement by [Carolina Orismar Alzul] where she denies the content of the interview transcripts and says she was deceived." In response to the State's objection (*infra* considering para. 10), the representatives stressed that "the lack of authentication of the sworn statement should not affect its content, as the State seeks to suggest." In this regard, they emphasized that "in previous cases [they have] had major difficulties in authenticating statements."

9. In the aforementioned sworn statement, the beneficiary stated that "[o]n March [1] [...] 2012 [...] [she] was interviewed by a psychologist who works in the victims' assistance unit, [who] said she was there on behalf of Mr. Luis Aguilera, [representative of the victim, and] proceed[ed] to ask [her] several questions [including whether] officials had threatened [her... and] if she was satisfied with the measures of protection, to [which she] responded that [...] the national guards had been to [...] her mother's house [, where she lives,] only twice, and that [she did] not feel satisfied with the protection measures, whereupon the official prepared a transcript in her own handwriting and asked [her] to sign it, [and], believing in the honesty of this official, [she] proceed[ed] to sign the transcript." The beneficiary also stated that "[she] has never had protection, so she could hardly renounce something that has never existed; however [she] is not opposed to the Inter-American Court maintaining the measures of protection in [her] favor." In this regard, she indicated that she "[d]oes not know the address of [...] the Victims' Assistance Unit", that she "[has] never been summoned by [that U]nit [...] to a meeting to discuss the scope of the measures" and that she does "not have the money to cover travel expenses when the Court of Control summons [her] to a hearing. "

10. Regarding the sworn statement of Carolina Orismar Alzul García, the State noted that it had not been authenticated and argued that “the alleged ignorance [...] of the location or notifications of the Victims’ Assistance Unit, is [...] at odds with the fact that all members of the Barrios Family Group have a representative before the Court” where the hearings on the measures of protection take place. The State also emphasized that during the interview, Carolina Orismar Alzul García was asked if she felt any sense of risk living in Guanayen, whereupon she answered that “things have happened, but it is not so” and, after asking her whether she “considered it necessary to maintain the measures of protection by officers attached to the National Bolivarian Guard [,] the aforementioned citizen renounced such measures.”

11. In this regard, the Commission noted that “the sworn statement by Orismar Carolina Alzul [...] would call into question the information mentioned by the respective judicial authority” and “would also raise serious doubts about the interviews with the partners of Narciso and Benito Barrios”. As to the beneficiaries for whom the State requested the lifting of measures, the Commission stated that “the nature of domestic hearings and decisions regarding measures of protection [should] not be confused with the application of an international order [...] to maintain provisional measures in favor of all the persons who remain as beneficiaries.” The Commission emphasized that the dialogue established by the State with the beneficiaries “cannot replace the Court’s protection orders.” Finally, the Commission stressed that “provisional measures are in force in favor of all the beneficiaries and that the domestic ruling is not effective for compliance with the State’s international obligations.”

12. As to the State’s request to lift the measures, in the first place, the Court points out that Dalila Ortuño is not a beneficiary of the provisional measures ordered in this case (*supra* Considering para. 5). Therefore it is not appropriate for this Court to rule on State’s request to lift the measures regarding this person or on her presumed situation of risk, even though she may be a beneficiary of domestic protection measures.

13. Furthermore, regarding the beneficiaries Yelitza Lugo Pelaes and Orismar Carolina Alzul, the Court takes cognizance of the interview transcripts provided by the State, according to which both beneficiaries had expressly renounced the domestic measures of protection ordered in their favor, considering that it was not necessary to continue with the protection provided by police officers. However, it points out that, according to information provided by the representatives of both beneficiaries before this Court, the transcripts of the interviews do not reflect their true wishes. This Court takes note of the observations presented by the representatives, according to which the beneficiaries did not know the purpose of said interview, and were not fully informed about the measures that they were allegedly renouncing. In this regard, it highlights the sworn statement made by Mrs. Orismar Carolina Alzul and provided by the representatives, where the aforementioned beneficiary “refute [d] the contents of the transcripts presented by the Attorney General’s Office at the hearing [...] held on March 7, 2012” and explained that she had told the official of the Victims’ Assistance Unit that she “did not feel satisfied with the protective measures” because the “national guards had gone to [her] mother’s house only twice.” Furthermore, in her statement Mrs. Alzul explained that the official who allegedly told her that she was there on behalf of her representatives, “drew up a record in her own handwriting, [and] asked [her] [...] to sign it, [which she did], believing in the honesty of the official” (*supra* Considering para. 9).

14. As to the State’s objection regarding the lack of authentication of this statement, the Court recalls that, within the framework of contentious cases, it has stated that the proceedings before it are not subject to the same formalities as domestic judicial proceedings, and that the incorporation of certain elements into the body of evidence must be made paying particular

attention to the circumstances of the specific case<sup>6</sup>, so that the legal and procedural balance between the parties are not affected.<sup>7</sup> Thus, the Court considers that, with even greater reason, the formalities present in domestic judicial proceedings cannot be required within the framework of provisional measures proceedings. This Court recalls that when ordering measures of protection, the Court or its President may apply the principle of *prima facie* assessment of a case, which sometimes requires the application of presumptions when considering protection needs.<sup>8</sup> Consequently, the Court considers that the sworn statement of Mrs. Orismar Carolina Alzul, provided by the representatives, is sufficient evidence to question *prima facie* her alleged decision to renounce the provisional measures granted by this Court. Also, while it is true that the representatives did not provide a sworn statement by Mrs. Yelitza Lugo Pelaes, the Court considers that the assertions by her representatives, along with those of Mrs. Alzul in her statement, are sufficient evidence to *prima facie* cast doubt on her alleged decision to renounce the protection measures, bearing in mind that the interviews with both beneficiaries were carried out in the same circumstances, by the same official of the Victims' Assistance Unit of the Attorney General's Office and, apparently, without the beneficiaries having been properly informed of the purpose of the interview.

15. The Court recalls that in its last three Orders it has required the State to conduct an "assessment of the situation of risk of each of the beneficiaries"<sup>9</sup>. However, based on the transcripts of the interviews conducted with the beneficiaries, and on other information provided, the Court finds no evidence that Venezuela conducted an objective analysis of the situation of risk facing those beneficiaries, beyond directly asking them whether they had received any threats or felt they were at risk. The Court finds that it is not consistent with the nature of the risk to which the beneficiaries of these provisional measures have been exposed, that the State should have questioned them regarding their wish to continue with these, without previously having conducted a comprehensive assessment of their situation of risk, bearing in mind that the situation of extreme gravity and urgency to which members of the Barrios family have been exposed has not necessarily materialized as individualized and prior threats to the acts of violence of which several of its members have been victims. Furthermore, the Court notes that, in a situation such as this case, it is indispensable that the State and the representatives adopt the measures necessary to ensure that any decision to renounce measures of protection is an informed decision. In this regard, the Court emphasizes that the transcripts of the interviews conducted by the State do not show that the purpose of the interview was explained to the beneficiaries or that they were informed of their rights as beneficiaries of provisional measures. On the contrary, according to the sworn statement of Mrs. Orismar Carolina Alzul, she was misinformed on this matter.

16. Consequently, having examined the facts and circumstances in which Yelitza Lugo Pelaes and Orismar Carolina Alzul supposedly renounced these provisional measures, the Court considers that it does not have sufficient information to grant the State's request to lift the measures issued in their favor. The Court recalls that if a State requests the lifting or modification of the provisional measures ordered, it must present sufficient evidence and arguments to allow the Court to conclude that the risk or threat no longer meets the requirements of extreme gravity and urgency

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<sup>6</sup> Cf., *inter alia*, *Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs*. Judgment of March 1, 2005. Series C No. 120, para. 33, and *Case of Artavia Murillo et al. ("In vitro Fertilization") v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2012. Series C No. 257, para. 58.

<sup>7</sup> Cf. *Case of Artavia Murillo et al. ("Fertilization in vitro") v. Costa Rica*, para. 58.

<sup>8</sup> Cf. *Case of Raxcaco Reyes et al. Provisional Measures regarding Guatemala*. Order of the Court of August 30, 2004, Considering para. 10, and *Case of Carpio Nicolle et al. Provisional Measures regarding Guatemala*. Order of the Court of October 25, 2012, Considering para. 24.

<sup>9</sup> *Case of Eloisa Barrios et al.* Order of the Court of November 25, 2010, Operative Paragraph 5; *Case of Eloisa Barrios et al.* Order of the Court of February 21, 2011, Operative Paragraph 5, and *Case of Eloisa Barrios et al.* Order of the Court of July 5, 2011, Operative Paragraph 5.

and the need to avoid irreparable damage.<sup>10</sup> Therefore the Court does not consider it appropriate to lift the provisional measures granted in favor of Yelitza Lugo Pelaes and Orismar Carolina Alzul.

17. Based on the foregoing and bearing in mind that, according to the information provided, the measures of protection granted at the domestic level in favor of said beneficiaries ceased on March 2012 (*supra* Considering para. 7), the Court requires that the State adopt the measures necessary to protect their life and personal integrity, and to conduct a comprehensive assessment of the current risks facing both beneficiaries. Also, the Court requires the State to submit, within the period established in the operative part of this Order, detailed and complete information on the implementation of provisional measures in favor of the aforementioned beneficiaries, as well as the results of the risk assessments conducted on both of them. Likewise, the Court deems it appropriate that the representatives, in their respective observations, convey to this Court, in a clear and specific manner, the wishes of Yelitza Lugo Pelaes and Orismar Carolina Alzul to continue to be protected by these provisional measures.

*B) Regarding the request to lift the provisional measures ordered in favor of Nestor Caudi Barrios and Víctor Daniel Cabrera Barrios*

18. The State requested the lifting of the measures issued in favor of Nestor Caudi Barrios, given that "it [was] clear that the non-compliance with the measures of protection[,] consisting of guard patrols [,] was due to the fact that this beneficiary left the jurisdiction without notice, and is currently in [the State of] Miranda." In this regard, according to the records provided by the State, during the hearing held on March 7, 2012 it was decided to urge the representative to inform Nestor Caudi Barrios that "the Measure of Protection agreed by that Court is useless since he is living outside this jurisdiction." The State also requested the lifting of the provisional measures ordered in favor of Edison Alexander Barrios and Víctor Daniel Cabrera Barrios, because "the measure[s] are nullified due to the imprisonment [of the first]" and the "status of being accused by the Attorney General's Office [of the second]". According to the latest information provided by the State, on October 8, 2012 the trial against Víctor Daniel Cabrera Barrios was opened, but then had to be postponed.

19. In relation to Nestor Caudi Barrios, the representatives indicated that "the Orders of the Court require the State as a whole to provide protection to the beneficiaries of the measures and are not limited to a specific geographic area as was determined by the domestic court [, and therefore the Court] should dismiss the request to lift [the measures]." They added that "the prosecutor's office, as an organ with national jurisdiction [should have] arranged for measures of protection in different judicial districts from 2004". The representatives also referred to the request to lift the measures supposedly ordered in favor of Edison Alexander Barrios and alleged that the process followed against him was "yet another sign of the authorities' intention to create a police record for members of the Barrios family, something that has been used previously to justify the executions of some of its members." Finally, in relation to Víctor Daniel Cabrera Barrios, the representatives alleged that his procedural situation "is not a valid justification for lifting the provisional measures" and referred to alleged irregularities in the processing and trial of this beneficiary. Furthermore, they reported that he was detained at the Aragua Penitentiary from December 2011 until February 2012, when he was granted an alternative measure to imprisonment.

20. In addition to its general considerations concerning the State's requests to lift the measures (*supra* Considering para. 11), the Commission indicated that a "situation of detention [...] cannot

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<sup>10</sup> Cf. *Matter of Liliana Ortega et al.* Provisional Measures regarding Venezuela. Order of the Court of March 1, 2005, Considering para. 11, and *Case of Gutiérrez Soler.* Provisional Measures regarding Colombia. Order of the Court of October 23, 2012, Considering para. 15.

be a reason for lifting a measure of protection, particularly in the instant case in which it has been demonstrated that the death threats and murders occurred precisely after the arrests of the younger members of the family." In particular, regarding Nestor Caudi Barrios, it pointed out that "[t]he fact that the beneficiary is not in the state of Aragua is no reason to declare 'useless' the protection in his favor" and expressed "its deep concern over his security and health after the attack he suffered."

21. Regarding the State's requests to lift the measures, the Court emphasizes, in the first place, that Edison Alexander Barrios is not a beneficiary of the provisional measures ordered by the Court in the present case (*supra* Considering para. 5). Therefore it is not appropriate for this Court to rule on State's request to lift the measures in respect of this person or on his alleged procedural situation, without prejudice to the fact that he could be a beneficiary of protection measures at the domestic level.

22. In the second place, the Court notes that the State requested the lifting of the provisional measures ordered in favor of Nestor Caudi Barrios and Víctor Daniel Cabrera Barrios, based on: (i) the alleged change of residence of Nestor Caudi Barrios to an area outside the state of Aragua, without having previously notified the State, and (ii) the procedural situation of Víctor Daniel Cabrera Barrios.

23. Accordingly, the Court recalls that, upon requesting the lifting of provisional measures, the State must present sufficient evidence and arguments to enable the Court to determine whether the situation of the respective beneficiary no longer meets the requirements of extreme gravity and urgency and the need to avoid irreparable damage (*supra* Considering para. 16).

24. In relation to Nestor Caudi Barrios, the Court notes that, during the hearing held on March 7, 2012, his representative was informed that the domestic measure of protection granted in his favor "was useless" because he lived outside the jurisdiction of the state of Aragua. In this regard, the Court considers it timely to reiterate that States Parties to the American Convention must guarantee compliance with the conventional provisions and their effects (*effet utile*) within their own domestic laws.<sup>11</sup> Thus, the State has an obligation to adopt the measures necessary to protect the life and integrity of the beneficiaries of provisional measures in any part of its territory or jurisdiction. The obligation to comply with the decisions of the Court corresponds to a basic principle of International Law (*pacta sunt servanda*), according to which States cannot, for reasons of domestic law, avoid assuming their pre-established international responsibilities.<sup>12</sup> Moreover, the treaty-based obligations of the States Parties are binding on all State authorities and organs.<sup>13</sup> In the context of contentious cases, the Court has established that the States Parties must ensure respect for and guarantee all the rights enshrined in the American Convention to all persons under their jurisdiction, without any limitation or exception based on said domestic organization. The regulatory system and practices of the entities that constitute a federal State Party to the Convention must conform to the American Convention.<sup>14</sup>

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<sup>11</sup> Cf. *Case of Ivcher Bronstein v. Peru. Jurisdiction*. Judgment of the Court of September 24, 1999, para. 37, and *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)* Provisional Measures regarding Peru. Order of the Court of November 24, 2010, Considering para. 6.

<sup>12</sup> Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Articles 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35, and *Case of Alban Cornejo et al. v. Ecuador. Monitoring Compliance with Judgment*. Order of the Court of February 5, 2013, Considering para. 5.

<sup>13</sup> Cf. *Case of Castillo Petruzzi et al. v. Peru. Monitoring Compliance with Judgment*. Order of the Court of November 17, 1999, Considering para. 3, and *Case of Alban Cornejo et al. v. Ecuador. Monitoring Compliance with Judgment*, Considering para. 5.

<sup>14</sup> Cf. *Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 6, 2009. Series C No. 200, para. 219.



25. While the Court stresses the importance of the beneficiaries' collaboration in implementing the measures of protection (*infra* Considering para. 56), it considers that the alleged lack of notification of the change of residence of Nestor Caudi Barrios is not sufficient reason to lift the provisional measures ordered in his favor.

26. Regarding the request to lift the measures in favor of Víctor Daniel Cabrera Barrios, the Court notes that, according to the latest information provided by the representatives, he is not currently in prison (he was granted an alternative precautionary measure in February 2012) (*supra* Considering para. 19). Nevertheless, the Court advises that imprisonment of a beneficiary or his procedural situation is no reason for lifting the provisional measures granted to a beneficiary in situation of risk. Although the mode of implementation of the provisional measures could be changed, based on his particular situation, this does not justify lifting the provisional measures granted to beneficiaries in a situation of extreme gravity and urgency, and at risk of suffering irreparable damage.

27. The Court considers it timely to recall that the State has the general obligations to respect and guarantee the free and full exercise of these rights to all individuals subject to its jurisdiction. Such obligations apply not only with regard to the power of the State but also with regard to the actions of private third parties. Special duties are derived from these general obligations, to be determined according to the particular needs for protection of the bearer of the right, whether due to the bearer's personal condition or to the specific situation facing the individual<sup>15</sup>, as is the case of detention. This Court has considered that the State is in a special position of guarantor with respect to persons deprived of their liberty because the prison authorities exercise total control over them. In that situation the State's general obligations to respect and guarantee rights take on a particular emphasis which requires the State to provide to inmates, in order to protect and guarantee their rights to life and personal integrity, the basic conditions compatible with their dignity while they remain in detention centers.<sup>16</sup>

28. Upon requesting the lifting of the provisional measures ordered in favor of Víctor Daniel Cabrera Barrios, the State did not provide any evidence to show that the beneficiary is not in a situation of grave risk. On the contrary, from the information provided it is clear that Víctor Daniel Cabrera Barrios was with Jorge Antonio Barrios when the latter was killed and had also witnessed the murder of Víctor Tomás Navarro Barrios (*infra* Considering para. 31 and 32). In addition, the Court emphasizes that although the State was asked to conduct risk assessments for all the beneficiaries, Venezuela has not provided any information in this regard (*supra* Considering para. 15 and *infra* Considering para. 54). Therefore the Court considers that the State has not presented valid grounds for lifting the provisional measures ordered in favor of the beneficiaries.

29. The Court emphasizes that any measures of protection ordered at the domestic level may differ in their nature, scope and effects, from the provisional measures ordered within the framework of the American Convention. Thus, although this should be duly assessed, the fact that measures of protection have been ordered at the domestic level does not limit this Court's authority to order provisional measures pursuant to the American Convention, nor does it

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<sup>15</sup> Cf. *Case of the Massacre of Pueblo Bello v. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, para. 111, and *Matter of Mery Naranjo et al.* Provisional Measures regarding Colombia. Order of the Court of November 25, 2010, Considering para. 42.

<sup>16</sup> Cf. *Case of Neira Alegría et al. v. Peru. Merits*. Judgment of January 19, 1995. Series C No. 20, para. 60, and *Matter of the Penitentiary Center of the Central Occidental Region: Uribana Prison*. Provisional Measures regarding Venezuela. Order of the President of the Court of August 7, 2012, Considering para. 8.

empower the State to stop adopting any other measures that may be necessary to comply with the Court's orders.<sup>17</sup>

30. Based on the foregoing, the Court considers that the requests by the State to lift the measures are inadmissible. Therefore, Venezuela shall adopt all the measures necessary to implement at the domestic level the provisional measures ordered in favor of Nestor Caudi Barrios and Víctor Daniel Cabrera Barrios. In this sense, the Court requires the State to submit detailed and complete information on the measures it has adopted or will adopt in favor of the aforesaid beneficiaries, within the term established in the operative part of this Order.

*C) Regarding the facts related to the deaths of Víctor Tomás Navarro Barrios and Jorge Antonio Barrios and the status of implementation of the provisional measures in favor of the other beneficiaries*

*C.1) Arguments and observations of the parties and of the Commission*

31. On October 8, 2012 the representatives reported to the Court that on June 9 of that year Víctor Tomás Navarro Barrios, aged 17 and a beneficiary of these provisional measures "lost his life." They stated that "[t]he incident occurred in the [...] the city of Cagua in the state of Aragua, at nine at night, as he was returning from visiting his cousin Víctor Barrios," and that he "was intercepted by two men who, without saying a word, fired three bullets at him which instantly caused his death." Subsequently, the representatives reported that "on December 15, 2012, Jorge Antonio Barrios was murdered in [...] the city of Cagua, [s]tate of Aragua", as he rode a motorcycle with his cousin, Víctor Daniel Cabrera Barrios. According to the representatives, they were intercepted by a "stranger [who] in the middle of the street shot Jorge Antonio Barrios in the back as he rode on the back of the motorcycle [and] at that moment [...] fell to the pavement lifeless." The representatives alleged that Jorge Antonio Barrios was a key witness in identifying those responsible for killing his father, Benito Antonio Barrios, in 1998.

32. In response to the requests for information by the President of the Court (*supra* Having Seen 6), the State reported that the "Thirty-second Prosecutor of the Attorney General's Office [o]f the judicial district of the State Aragua, is carrying out effective and pertinent procedures in order to gather sufficient evidence to clarify the facts and to determine the relevant criminal liabilities", regarding the alleged murders of Víctor Tomás Navarro Barrios and of Jorge Antonio Barrios. In this regard, the State reported on some of the specific procedures carried out for that purpose, including technical inspections and photographic records at the scene of the incident, medical-legal examinations and visual examination of the victims' bodies, ballistic tests and interviews with witnesses, such as Víctor Cabrera Barrios "who is a witness" in the death of Víctor Tomás Navarro Barrios. Also, regarding both incidents, Venezuela reported that the Attorney General's Office "ordered the officers who secured the crime scene to be summoned and interviewed." In particular, regarding the presumed killing of Jorge Antonio Barrios, the State reported that the Attorney General's Office asked the relevant Court of Control to issue arrest warrants against three persons and that the case is still in the investigation phase. In addition, the State pointed out that "Jorge Antonio Barrios [...] was not receiving measures of protection, given that this citizen had no fixed abode."

33. As to the implementation of the provisional measures, the State reported that the measures of protection "have been implemented as agreed with members of the Barrios family."<sup>18</sup> It

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<sup>17</sup> Cf. *Case of Guerrero Gallucci and Martínez Barrios*. Provisional Measures regarding Venezuela. Order of the Court of July 4, 2006, Considering para. 11.

explained that these measures consist of three patrols carried out by members of the National Guard, attached to Regional Command No. 2 of the National Guard, “around the homes of the citizens Justina Barrios, Eloisa Barrios and Inés Josefina [B]arrios”. It stated that those patrols are recorded in the Monitoring Compliance Records, but that the beneficiaries “have refused to sign [them] since November 2011.” Also, in its various reports, the State explained that four hearings had taken place with the representatives and the beneficiaries between February 2011 and March 2012, in order to monitor the implementation of these measures; meetings with three others were convened but had to be postponed.<sup>19</sup> The State argued that, despite these hearings, there is “ignorance [of] the conditions that must be met by the beneficiaries for the effective implementation of the measures”, and mentioned the fact that the beneficiaries had moved away from their homes without informing the State, and their refusal “to sign the visitors’ sheet prepared by military personnel.” Venezuela reported that it had planned to provide the beneficiaries with two homes in the state Aragua in April 2012, through the Great Housing Mission, to serve as a shelter for members of the Barrios family and thereby “contribute to resolving the problem”, but that “the emergency situation [generated] in that regional institution, as a result of the heavy rains, has left a considerable number of citizens victims making it impossible to finally execute that assignation.” Nevertheless, in December 2012 they reported that “meetings are currently taking place [...] in order to follow through with the proposed plans.”

34. The State did not refer directly to the implementation of the provisional measures in favor of the members of the Barrios family present or resident in the states of Carabobo and Miranda. However, it forwarded the record of a hearing held on October 25, 2011 before the Criminal Court of First Instance, acting in a supervisory capacity, of the state of Aragua, where the prosecutor in charge, on behalf of the Attorney General’s Office, emphasized that in the State Miranda the jurisdictional bodies agreed that the measures would be executed by the Municipal Police, and indicated that “there is no reason [why] this decision should call into question those police organs, which are in no way related to the events which occurred in the state of Aragua to the detriment [of] the Barrios family.” The State also forwarded information on the criminal proceedings against Víctor Daniel Cabrera Barrios begun on December 16, 2011. It also provided a report by the Office of the Ombudsman on, *inter alia*, the monitoring by that state agency of the implementation of the provisional measures and the communications sent to the Governor’s Office of the state of Aragua by the supervisor of the Victims’ Assistance Unit in relation to the apartments to be provided to the Barrios family, without obtaining a response. The State also provided a report from the Attorney General’s Office on the investigation into the cases of Narciso Barrios, Benito Antonio Barrios and Nestor Caudi Barrios.

35. Regarding the information provided by the State on the deaths of Víctor Tomás Navarro Barrios and Jorge Antonio Barrios, the representatives emphasized that these facts “highlight the State’s continued failure to comply with the provisional measures.” As to the procedures carried out in connection with the death of Víctor Tomás Navarro Barrios (*supra* Considering para. 32), they emphasized that “more than six months after [his] death [...], the process remains in the investigation phase”, without anyone being prosecuted. They further indicated that they do not

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<sup>18</sup> In this regard, the State provided a report prepared by the Office of the Ombudsman, in which it monitors compliance with these measures, based on information received from the security unit in charge of carrying out the patrols, and from the Attorney General’s Office, from August 2011 until May 2012.

<sup>19</sup> According to the information provided, hearings took place on February 8, July 27 and October 25, 2011 and March 7, 2012. The State also reported that hearings were convened for August 31, September 21 and November 24, 2011, but did not take place because of the “victims’ failure to appear”; and that in the case of the hearing convened for November 24, 2011, because of the “failure to appear of the victims [,] the Commander of the 21<sup>st</sup> Detachment of the National Guard [...] and the [r]epresentative of the v[i]ctims”. In this regard, the representatives pointed out that on September 21, 2011 a hearing was convened, but after waiting for an hour “without the secretary appearing in the court to inform them of the reasons for the delay, in order not to wait in vain, the representative and the victim decided to leave the Court.”

know the outcome of the proceeding reported by the State. Regarding the murder of Jorge Antonio Barrios, the representatives argued that the “context of disregard for the provisional measures [in which his death occurred], [...] demonstrates and perpetuates an extremely high level of risk for the members of the Barrios family.” They stressed that the murder of Jorge Antonio Barrios “occurred [...] a few blocks from the family home of Eloisa Barrios and [from] the site of the murder of Víctor Tomás [Navarro] Barrios which occurred a few months earlier.” In addition, the representatives made certain observations and expressed “some concerns over the details of the investigation”, even though they “positively assess [ed]” the request for three arrest warrants in that investigation. They reported that it is not true that the beneficiary Jorge Antonio Barrios had no fixed abode, and provided an address. In this sense, they indicated that the State’s argument for not offering them measures of protection “lack[s] any factual or legal basis” and, in any case, “would be irrelevant [,] since at the time of his murder, Jorge Antonio was [...] with another beneficiary of [...] provisional measures.” They noted that the State’s comments “constitute an admission [] that at the time of the death of Jorge Antonio Barrios, the state authorities were not implementing the provisional measures.”

36. As to the implementation of the measures, the representatives argued that “in the past there were sporadic visits to the home of Mrs. Eloisa Barrios; however these were abandoned by officers of the [N]ational [G]uard, who without any explanation stopped visiting her residence” from the end of 2011. They also indicated that when officers of the National Guard appeared they demanded that she “sign different forms [to] justify the supposed continuous visits.” They asserted that the State has “not complied with the agreement made at the hearing of July 27 [2011]”, since in the State Miranda “municipal policemen have been commissioned” to provide protection at the homes of Maritza Barrios and Elbira Barrios, even though these measures should be executed exclusively by the National Guard. Regarding the adjudication of the homes, the representatives argued that this demonstrates “the improvisation [of the] State [which] is still waiting for the execution of a housing plan in which two buildings will be assigned for conversion into shelters”, without predetermining who will live in the homes or coordinating their location with the beneficiaries. In this regard, they argued that they “do not understand how the State can assert that the provision of shelter homes will be resolved through the Great Housing Mission.”<sup>20</sup> In their brief of January 7, 2013, the representatives reported that in November 2012 the State allocated two apartments to Eloisa Barrios and Inés Josefina Barrios, through the National Housing Institute (INAVI), over which they expressed their satisfaction. Taking into account the foregoing, they emphasized the need to guarantee the safety of both beneficiaries in their new homes. They also requested that the State “continue to provide apartments to other members of the family”, in particular to Justina and Luisa del Carmen Barrios, who “are [...] defenseless, since the National Guard agents [...] have said that the distance between the two houses has made it difficult to comply with the measures of protection.” The representatives emphasized that other apartments are available in the area in which the new homes of Eloisa and Inés Josefina Barrios are located and, in this regard, stated that if the beneficiaries “were in the same area, the same continuous patrols by the National Guard would ensure compliance with the protection measures.”

37. The representatives pointed out that they had made their observations at the various hearings held, which, they argued, “have only served to hear about different offers from the government representatives, without any of these having been formalized.” They also emphasized that, since the hearing held in March 2012, the beneficiaries have not been summoned to another hearing, nor has a timetable been proposed; the representatives consider that hearings should be held quarterly, with the possibility of holding special hearings. In this regard, they expressed their willingness to enter into a dialogue with the respective court, in order to ensure the definitive planning, implementation and monitoring of the measures, given that seven years have elapsed

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<sup>20</sup> In particular, they indicated that 280 apartments are being built in the State Aragua as part of the government’s Great Housing Mission; however, as of March 2011, there were 28,000 applicants for these.

since the first Order for these measures was issued, and “so far, neither the representatives nor the victims have learned of any plan [by the State in this regard].” Furthermore, the representatives referred to the status of the investigations into the deaths of Juan José and Narciso Barrios, and the attack against Nestor Caudi Barrios. Finally, they asked the Court, *inter alia*, to summon a public hearing on the implementation of these measures.

38. The Commission expressed its “deep concern over the security situation of the beneficiaries [...] and the lack of an adequate response by the State.” It indicated that the State “has not provided the planned, coordinated, comprehensive and efficient response demanded by the situation of extreme risk facing members of the Barrios family.” It added that “[t]he reports of the Office of the Ombudsman and of the Office of the Attorney General, can be summarized as official letters and summons to hearings which, far from creating the conditions to make effective progress, have resulted in decisions that cause the greatest concern to the Commission.” In relation to the homes offered by the State, the Commission noted that “this measure has not been implemented either.” It pointed out that the State did not provide the specific information requested by the Inter-American Court “beyond the usual bimonthly implementation reports.” Finally, “given the grave situation of non-compliance with these provisional measures and the continued situation of extreme risk facing the beneficiaries who are still alive”, the Commission requested, *inter alia*, that a public hearing be convened on the implementation of the present measures.

### C.2) Considerations of the Court

39. In the first place, the Court appreciates the measures adopted by the State and the steps taken to protect the beneficiaries, including the recent provision of two apartments for two of the beneficiaries of these measures, as well as the start of the investigations into the murders of Víctor Tomás Navarro Barrios and Jorge Antonio Barrios. Nevertheless, the Court regrets the recent deaths of these last two beneficiaries and considers it an extremely serious matter that these should have occurred, despite the fact that provisional measures are in force.

40. The Court reminds the State that it is not sufficient to adopt certain measures of protection; it requires that these measures and their implementation be effective, so that the risk to those persons whose protection is sought ceases.<sup>21</sup> The Court considers that the murders of Víctor Tomás and Jorge Antonio Barrios demonstrate, once again, the ineffectiveness of the measures adopted thus far by the State to protect the life and personal integrity of the beneficiaries.

41. The Court notes with concern that the death of Jorge Antonio Barrios is the ninth killing of a member of the Barrios family, six of whom have died while these provisional measures were in effect and one under the precautionary measures granted by the Inter-American Commission: Luis Alberto Barrios, on September 20, 2004; Rigoberto Barrios, between January 19 and 20, 2005; Oscar Barrios, on November 29, 2009; Wilmer José Flores Barrios, on September 1, 2010; Juan Jose Barrios, on May 28, 2011 and, more recently, the deaths of Víctor Tomás Navarro Barrios and Jorge Antonio Barrios, on June 9 and December 15, 2012, respectively.<sup>22</sup> In addition to the foregoing, in January 2011 there was an attack against the life of Nestor Caudi Barrios, another

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<sup>21</sup> Cf. *Matter of Juan Almonte Herrera et al.* Provisional measures regarding the Dominican Republic. Order of the President of the Court of March 24, 2010, Considering para. 16, and *Matter of the Forensic Anthropology Foundation of Guatemala*. Provisional Measures regarding Guatemala. Order of the Court of February 22, 2011, Considering para. 17.

<sup>22</sup> The Judgment issued by the Court in this case established that Messrs. Benito Antonio Barrios and Narciso Barrios were killed by state agents, in 1998 and 2003, respectively, a fact that was not disputed by the State. Consequently, the Court determined the State’s international responsibility for the violation of the right to life enshrined in Article 4(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Benito Antonio Barrios and Narciso Barrios. Cf. *Case of Barrios Family v. Venezuela. Merits, Reparations and Costs*. Judgment of November 24, 2011. Series C No. 237, paras. 64 and 68.

beneficiary protected by these provisional measures. Accordingly, the Court reiterates that all these events represent a serious failure on the part of the State to comply with the provisions of Article 63(2) of the American Convention.

42. The Court recalls that the Judgment delivered in this case it concluded that the State “failed in its duties of protection and prevention regarding five beneficiaries<sup>23</sup> of the protective measures ordered by the organs of the Inter-American System,” who were murdered, or suffered attempts on their lives, despite the application of precautionary or provisional measures. The Court concludes that “the State had full knowledge of the risk facing those members of the Barrios family, both because of the reports and the measures of protection requested and ordered at the domestic level, and by virtue of the precautionary and provisional measures ordered by the bodies of the Inter-American System.”<sup>24</sup>

43. The Court points out that the deaths of Víctor Tomás Navarro Barrios and Jorge Antonio Barrios occurred despite this ruling by the Court. In particular, with regard to Víctor Tomás Navarro Barrios, the Court regrets that this is the third son of Mrs. Maritza Barrios to be murdered while the provisional measures were in effect. The Court takes note of the information provided by the State regarding the investigations carried out into these facts; however it also notes that Venezuela did not provide specific information on the measures adopted to avoid or prevent this action. Regarding the death of Jorge Antonio Barrios, the Court observes that the State expressly indicated that, at the time of his death, this beneficiary was not being protected by domestic measures of protection. In its report, Venezuela indicated that this was because the aforementioned beneficiary had no fixed abode; however, the Court takes note of the representatives’ affirmation that this was not true (*supra* Considering paras. 32 and 35).<sup>25</sup> Notwithstanding the foregoing, the Court emphasizes that both beneficiaries were murdered while they traveled from one place to another, and that therefore, regardless of their place of residence, the measures adopted by the State were not effective. From the information provided by Venezuela, it is not clear how the mechanism of protection implemented by the State – namely, the surveillance patrols – could have prevented these deaths, or would have been appropriate and sufficient to protect the beneficiaries in these circumstances. The Court considers that the information provided is not sufficient to determine whether the state authorities did everything in their power to protect the beneficiaries or whether, in the circumstances of the moment, they acted in a diligent and timely manner.

44. Furthermore, the Court notes that the murders of Víctor Tomás Navarro Barrios and Jorge Antonio Barrios share common characteristics with previous attempts against the lives of members of the Barrios family, basically from 2004, as determined by the Court in its Judgment: “these deaths were caused by several shots from a firearm in places near their homes in the community of Guanayen[, regarding which] the State knew the situation of risk facing them, [...] since] they were beneficiaries of provisional measures [...]”<sup>26</sup>.

45. The Court reiterates that, although Article 1(1) of the Convention establishes the general obligations of the States Parties to respect the rights and freedoms enshrined therein and to

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<sup>23</sup> In particular, Luis Alberto Barrios, Oscar Jose Barrios, Wilmer José Flores Barrios, Nestor Caudi Barrios and Juan Jose Barrios. *Cf. Case of the Barrios Family v. Venezuela. Merits, Reparations and Costs*, paras. 313 and 124.

<sup>24</sup> *Cf. Case of the Barrios Family v. Venezuela. Merits, Reparations and Costs*, paras. 313 and 124.

<sup>25</sup> Although the Court indicated that it is not appropriate to rule on the State’s request to lift the measures in favor of Dalila Ortuño (*supra* Considering para. 12), it notes that at the domestic hearing held on March 7, 2012, the respective Court of Control ordered the suspension of the protection measures in favor of this person “and her family group”. The beneficiary Jorge Antonio Barrios formed part of Mrs. Dalila Ortuño’s family group. However, the Court does not have sufficient information to know whether this domestic order included said beneficiary.

<sup>26</sup> *Cf. Case of Barrios Family v. Venezuela. Merits, Reparations and Costs*, para. 314.

guarantee their free and full exercise to all persons subject to their jurisdiction, whenever a person is a beneficiary of provisional measures this general duty is reinforced regarding that individual, and therefore there must be a special duty of care.<sup>27</sup> Failure to fulfill these obligations can imply the international responsibility of the State.<sup>28</sup>

46. This Court finds that the State has not properly undertaken the implementation, execution and monitoring of the measures of protection in favor of members of the Barrios family, which has placed them in a position of serious vulnerability. In particular, this Court considers that the deaths of two more beneficiaries, Víctor Tomás Navarro Barrios and Jorge Antonio Barrios, denote the lack of effective implementation of these provisional measures. This necessarily implies that the State has not complied with the measures ordered by the Court, whose essential purpose is to effectively protect and preserve the life and personal integrity of members of the Barrios family.<sup>29</sup>

47. In the second place, with regard to the implementation of the provisional measures in favor of the other beneficiaries, the Court takes note of the information provided by the State, according to which surveillance patrols continue to be implemented at the homes of three of the beneficiaries of these measures. However, it emphasizes that, according to the representatives, these patrols were carried out sporadically and were suspended at the end of 2011, and therefore are not being carried out at present. In this regard, the Court emphasizes that in her sworn statement Orismar Carolina Alzul García indicated that she “do[es] not recall the last time that the [N]ational [G]uard visited her mother’s house where she lives”. Moreover, at the hearing held on October 25, 2011, the prosecutor indicated that he would contact the 21<sup>st</sup> Detachment of the National Guard to convey the representatives’ comments “that [G]uard officers make sporadic visits to the home of Mrs. Maritza Barrios but require her to sign up to 9 pages of records of their visits”. However, no information was provided on the results of that procedure.

48. The Court recalls that in its Order of July 5, 2011 it specifically required the State to provide immediate and effective security for each of the beneficiaries of the measures, by means of permanent guard measures, as well as to the homes of Maritza Barrios and Orismar Carolina Alzul García. However, the Court considers that, based on the information provided by the parties (*supra* Considering para. 47), it is not clear that security was being provided to each of the beneficiaries or to the homes of Maritza Barrios and Orismar Carolina Alzul García. Moreover, the Court notes that no relevant information has been provided regarding the implementation of the measures for those beneficiaries who do not live in the state of Aragua.

49. The Court also recalls that in its Judgment in this case it considered that the domestic measure of protection, consisting exclusively of sporadic patrols around the homes of some members of the Barrios family, were not sufficient and effective to mitigate the risk suffered by the victims and adequately prevent future acts of violence<sup>30</sup>, inasmuch as they were not sufficient to prevent the attacks against the life of five members of the Barrios family.

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<sup>27</sup> Cf. *Case of Velasquez Rodriguez*. Provisional Measures regarding Honduras. Order of the Court of January 15, 1988, Considering para. 3, and *Case of Eloisa Barrios et al.* Order of the Court of July 5, 2011, Considering para. 12.

<sup>28</sup> Cf. *Case of Hillaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94, paras. 196 to 200, and *Matter of the Capital El Rodeo I and El Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Court of September 6, 2012, Considering para. 3.

<sup>29</sup> Cf. *Case of the Communities of Jiguamiandó and Curbaradó*. Order of the Court of February 7, 2006, Considering para. 21, and *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*. Provisional Measures regarding Venezuela. Order of the Court of September 6, 2012, Considering para. 16.

<sup>30</sup> Cf. *Case of Barrios Family v. Venezuela. Merits, Reparations and Costs*, para. 130.

50. Despite this ruling by the Court, these surveillance patrols continue to be the mechanism by which the State implements the provisional measures ordered by this Court, without providing information on the adoption of other means of protection. The Court takes cognizance of and appreciates the information provided by the State, regarding the fact that it is carrying out the pertinent procedures to assign the Barrios family two apartments to serve as shelters, through the Great Housing Mission. Furthermore, it notes that, according to more recent information submitted by the representatives, in November 2012 two apartments were provided to two of the beneficiaries of these measures, through another state institution. However, the Court does not have sufficient information to know whether the handover of those apartments forms part of the implementation of these measures or if, as the representatives suggest, other apartments could be assigned to the rest of the beneficiaries who are members of the Barrios family. In this regard, the Court requests that the State refer to this information, within the term established in the operative part of this Order, as well as to the proposal of the representatives in this regard (*supra* Considering para. 36). In any case, the Court considers it imperative to continue implementing other measures of protection, different from the surveillance patrols at the homes of some beneficiaries, so as to effectively protect the life and personal integrity of members of the Barrios family.

51. The Court insists that in order to ensure the effective application of the rights enshrined in the American Convention, States Parties have the obligation, *erga omnes*, to protect all persons under their jurisdiction, even in relation to the actions of third parties or irregular armed groups of any nature.<sup>31</sup> Taking into account the deaths of two more beneficiaries, as well as the rest of the foregoing considerations, the Court considers that the State has not effectively applied the provisional measures ordered by this Court in its previous Orders (*supra* Having Seen 1).

52. Given the grave situation facing the beneficiaries, as demonstrated by the latest events, the Court reiterates that the State must adopt immediately and effectively the necessary and special measures to protect and guarantee the life and personal integrity of all the beneficiaries of the measures, in accordance with the Orders issued by the Court on November 25, 2010 and February 21, and July 5, 2011, so as to eradicate the sources of risk, prevent facts such as those described from being repeated and allow the beneficiaries to lead their lives normally and without fear.

53. The Court considers it necessary that the State adopt all the measures necessary to ensure the effective implementation of the protection measures. To this end, the Court deems it essential that Venezuela, after hearing the opinion of the beneficiaries, include in their protection scheme any measures necessary to provide them with effective protection during their movements and travel, within or outside the area where they live. In this regard, the Court urges the beneficiaries and their representatives to offer the State the necessary collaboration for this purpose. The State shall guarantee the security and confidentiality of the information provided by the beneficiaries. Also, the Court once again asks the State to provide immediate and effective security for each of the beneficiaries of the measures, by means of permanent guard measures, as well as to the homes of Maritza Barrios and Orismar Carolina Alzul García, and to agree on more comprehensive provisional measures in the context of the dialogue between beneficiaries and State. In the event that this is not possible, the State is requested to submit to the Court the relevant explanations, as well as an alternative measure of protection to improve the effectiveness of these measures. The Court requests that the State submit, within the term established in the operative part of this Order, detailed and complete information on any measures that it has adopted and will adopt to make these measures more effective in favor of all the beneficiaries, including those who do not live in the state of Aragua, bearing in mind the foregoing considerations.

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<sup>31</sup> Cf. *Matter of the Peace Community of San Jose de Apartadó*. Provisional Measures regarding Colombia. Order of the Court of June 18, 2002, Considering para. 11, and *Matter the Andean Region*. Provisional Measures regarding Venezuela. Order of the Court of September 6, 2012, Considering para. 13.



54. Likewise, the Court considers it essential to remind the State of its Orders of November 25, 2010, February 21 and July 5, 2011, regarding the need to conduct a comprehensive study or assessment of the situation of risk facing each of the beneficiaries, and to provide the Court with detailed and complete information on the results, with the supporting documentation, as well the specific, adequate and sufficient measures and means of protection to be implemented as a result of those assessments. To this end, the beneficiaries and their representatives shall offer their full cooperation to the State and shall facilitate the aforementioned assessments.

55. Thirdly, with regard to the beneficiaries' participation in the planning and implementation of these measures, the Court takes note of the information forwarded by the State regarding the hearings before a Court of Control in the state of Aragua, in order to monitor compliance. However, it emphasizes that the Court has not received any information since March 2012 in this regard. The Court recalls that the State should take appropriate steps to ensure that the provisional measures established in this Order are planned and implemented with the participation of the beneficiaries or their representatives, so that they can be provided in a diligent and effective manner.

56. Also, the Court considers it important that the beneficiaries and their representatives cooperate in order to ensure an effective implementation of the security measures<sup>32</sup>, and that the state authorities establish clear and direct means of communication with the beneficiaries, so as to foster the necessary confidence for their adequate protection. The Court stresses that the active participation of the State, and particularly of the representatives, is essential to coordinate the implementation of the provisional measures in this matter. Such coordination implies that the parties must propose and agree upon measures, in case one of them considers that the existing ones are not adequate. Accordingly, the Court calls on the State to respond to the representatives' proposal to hold quarterly hearings to monitor compliance with these measures, within the term established in the operative part of this Order.

57. This Court has also stated that the analysis of the effectiveness of the investigations corresponds to the examination of the merits of the case.<sup>33</sup> Consequently, it calls on the representatives and the State to ensure that the information submitted regarding the investigation of the facts related to these provisional measures (*supra* Considering paras. 34 and 37) is forwarded to the Court in the file on monitoring compliance with the Judgment on merits, reparations and costs issued on November 24, 2011 in the case *Barrios Family v. Venezuela*.

#### *D) Regarding the duty to present information*

58. In its Order of July 5, 2011 the Court required the State to submit specific information on the measures adopted in compliance with said Order no later than August 27, 2011. However, the Court notes that this report was not submitted until February 14, 2012 and that it did not contain the detailed and complete information requested by the Court.

59. Furthermore, in that Order the State was also required to submit bimonthly reports in the context of these provisional measures, which it has not submitted on a regular basis. Although the Court acknowledges that the State has responded to the requests for specific information on the acts of violence or alleged harassment reported by the representatives (*supra* Having Seen 7), it

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<sup>32</sup> Cf. *Case of the Massacre of Mapiripán*. Provisional measures regarding Colombia. Order of the Court of September 2, 2010, Considering para. 20, and *Matter Perez Torres et al. ("Cotton Field")*. Provisional Measures regarding Mexico. Order of the Court of June 30, 2011, Considering para. 12.

<sup>33</sup> Cf. *Matter of Pilar Noriega García et al.* Provisional measures regarding Mexico. Order of the Court of February 6, 2008, Considering para. 14, and *Matter Alvarado Reyes et al.*, Considering para. 16.

notes that, more than eighteen months after its last Order, the State has still not submitted the specific, detailed and complete information requested by the Court in its Order, regarding new measures of protection and the risk assessments that should have been carried out for the beneficiaries. The Court stresses that the latter information has been requested in the last three Orders issued by the Court, without the State having responded until now to this request. This has unfavorably affected this Court's ability to adequately assess the implementation of these measures and Venezuela's compliance with its obligations and, indeed, its possibility of addressing requests from the State itself regarding the maintenance or lifting of the present measures with respect to certain beneficiaries (*supra* Considering paras. 15 and 28).

60. This Court recalls that the States Parties to the Convention, having accepted the Court's contentious jurisdiction, have the duty to fulfill their obligations as established by the Court. This obligation also means that the State has a duty to report to the Court on the measures adopted in compliance with the Court's decisions<sup>34</sup>. The duty to report is an obligation which, to ensure effective compliance, requires the formal presentation to the Court, within the stipulated timeframe, of a document containing specific, true, current and detailed information on the issues regarding which the State has this obligation<sup>35</sup>. Timely observance of the State's obligation to show the Court how it is complying with each of the points addressed in the order is essential to assess the status of compliance with the provisional measures overall.<sup>36</sup>

61. Taking into account the request of the representatives and of the Commission (*supra* Considering paras. 37 and 38), this Court considers it timely and necessary to summon a public hearing to receive up-to-date and detailed information from the State, as well as the observations of the representatives and of the Commission, concerning the implementation of the measures. The purpose of that hearing shall be to assess the effectiveness of the measures adopted by the State based on this Order, and to follow up on the agreements reached with the beneficiaries and on the information that the State is required to submit, pursuant to Operative paragraph 5, *infra*, under the terms of Considering paras. 17, 30, 50, 52, 53, 54 and 56.

**THEREFORE:**

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

in exercise of the authority granted by Article 63(2) of the American Convention on Human Rights and Articles 27 and 31 of the Court's Rules of Procedure,

**DECLARES THAT:**

1. The deaths of Messrs. Víctor Tomás Navarro Barrios and Jorge Antonio Barrios, which occurred on June 9 and December 15, 2012, respectively, demonstrate the State's failure to comply with the provisional measures ordered, contrary to the provisions established in Article 63(2) of the American Convention on Human Rights.

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<sup>34</sup> Cf. *Case of Barrios Altos v. Peru*. Supervision of Judgment. Order of the Court of 17 of November 2004, Considering para. 7, and *Case of Eloísa Barrios et al.* Provisional Measures regarding Venezuela. Order of the Court of July 5, 2011, Considering para. 18.

<sup>35</sup> Cf. *Matter Liliana Ortega et al.* Provisional Measures regarding Venezuela. Order of the Court of December 2, 2003, Considering para. duodecimo, and *Matter Alvarado Reyes et al.*, Considering para. 25.

<sup>36</sup> Cf. *Case of Five Pensioners v. Peru*. Monitoring Compliance with Judgment. Order of the Court of November 17, 2004, Considering para. 5, and *Case of Eloísa Barrios et al.* Order of the Court of July 5, 2011, Considering para. 18.

## **AND DECIDES:**

1. To declare that the provisional measures adopted in favor of Víctor Tomás Navarro Barrios and Jorge Antonio Barrios have ceased to have any purpose as a result of their deaths, pursuant to Considering paras. 39 to 46 of this Order.
2. To summon the Bolivarian Republic of Venezuela, the Inter-American Commission on Human Rights and the representatives of the beneficiaries of the provisional measures to a public hearing to be held at the seat of the Inter-American Court of Human Rights during the 99<sup>th</sup> Regular Period of Sessions, which will take place between May 13 and 31, 2013, so that the Court may receive the specific information and observations on the provisional measures ordered in this matter, in accordance with Considering para. 61 of this Order.
3. To maintain the provisional measures ordered by the Inter-American Court of Human Rights in its Orders of November 23, 2004, June 29 and September 22, 2005, February 4 and November 25, 2010 and February 21 and July 5, 2011.
4. To require the State to adopt, immediately and effectively, all special and necessary measures, additional to any it may have adopted, to protect and guarantee the life and personal integrity of the beneficiaries of these measures.
5. To require the State to provide immediate and effective security for each of the beneficiaries of the measures, by means of permanent guard measures, as well as to the homes of Maritza Barrios and Orismar Carolina Alzul García, and to agree upon more comprehensive provisional measures in the context of the dialogue between the beneficiaries and the State. The State shall guarantee the security and confidentiality of the information provided by the beneficiaries.
6. To require the State to inform the Inter-American Court of Human Rights, no later than April 13, 2013, of all the special and necessary measures adopted to prevent actions that threaten the life or personal integrity of the beneficiaries of these provisional measures, and to include the information requested in Considering paras. 17, 30, 50, 53, 54 and 56 of this Order. Furthermore, said report shall contain an assessment of the risk facing each of the beneficiaries, as well as the definition of specific, adequate and sufficient measures and means of protection for each one.
7. To reiterate to the State that it shall continue reporting to the Inter-American Court of Human Rights every two months on the provisional measures adopted, and to require the beneficiaries of these measures or their representatives to submit their observations within four weeks of receiving the reports of the State, and the Inter-American Commission on Human Rights to present its observations to these reports of the State within six weeks of receiving them.
8. To require the Secretariat of the Court to serve notice of this Order to the Bolivarian Republic of Venezuela, the representatives of the beneficiaries and the Inter-American Commission on Human Rights.

Judge Eduardo Vio Grossi informed the Court of his Individual Opinion, which accompanies this Order.

Diego García-Sayán  
President

Manuel Ventura Robles

Eduardo Vio Grossi

Roberto de Figueiredo Caldas

Humberto Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary

**INDIVIDUAL OPINION OF JUDGE EDUARDO VIO GROSSI  
ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS  
FEBRUARY 13, 2013  
PROVISIONAL MEASURES REGARDING VENEZUELA  
CASE OF THE BARRIOS FAMILY**

I hereby issue the following individual opinion for the purpose of reiterating the views expressed in my concurrent opinion regarding the Judgment delivered by the Inter-American Court of Human Rights, on November 24, 2011, in the Case of the Barrios Family v. Venezuela.

Eduardo Vio Grossi  
Judge

Pablo Saavedra Alessandri  
Secretary