

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF DECEMBER 2, 2003***

PROVISIONAL MEASURES

LUISIANA RÍOS IN THE MATTER OF VENEZUELA

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of November 27, 2002, on the provisional measures requested by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") in favor of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe, in which it decided:

1. To order the State to adopt forthwith all necessary measures to protect the life and safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe, employees of *Radio Caracas Televisión* (RCTV).

2. To order the State to allow the petitioners to participate in the planning and implementation of the protection measures and, in general, to inform them of progress regarding the measures ordered by the Inter-American Court of Human Rights.

3. To order the State to investigate the facts stated in the complaint that gave rise to these measures in order to discover and punish those responsible.

[...]

6. To order the State, subsequent to its first report [December 12, 2002], to continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and to order the Inter-American Commission on Human Rights to submit its observations to the said reports with six weeks of receiving them.

2. The first report of the State of Venezuela (hereinafter "the State" or "Venezuela") of December 12, 2002, and its attachments, in which it referred to "compliance with the Order of November 27, [2002], issued by [the] Court" in favor of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe. In this respect, it advised that it had sent communications to the Ministry of the Interior and Justice, the Office of the Attorney General (*Ministerio Público*) and the Office of the Ombudsman, requesting them "to order all necessary measures to comply with the [...] provisional measures." It also indicated that the "Attorney General [...] [had] advise[d] that he had assigned the 2nd and 74th prosecutors of the Office of the Attorney General, both of the Judicial District of the metropolitan area of Caracas" to comply with the measure contained in the third operative paragraph of the Order issued by the Court in the instant case (*supra* first having seen paragraph).

3. The brief of December 20, 2002, and its attachment, in which the Inter-American Commission presented its comments on the first report of the State (*supra*

* Judge Hernán Salgado Pesantes advised the Court that, owing to circumstances beyond his control, he would be unable to attend the deliberation and signature of this Order.

second having seen paragraph). In this respect, it indicated that "it consider[ed] it essential that all necessary measures should be expedite[d] for the full protection of the persons named by the Inter-American Court in the Order of November 27, 2002," because the State ha[d] not taken any official action to comply fully with the provisional measures.

4. Note CDH-S/1164 of December 20, 2002, in which the Secretariat of the Court (hereinafter "the Secretariat"), on the instructions of the President of the Court (hereinafter "the President"), requested the State to present a report on the implementation of the provisional measures by January 10, 2003, at the latest.

5. The second report of the State of January 10, 2003, and its attachments, in which it referred to the implementation of the provisional measures and indicated that on December 11, 2002, "the Attorney General [...] advised that the 2nd and 74th prosecutors of the Office of the Attorney General of the Judicial District of the metropolitan area of Caracas had been assigned [...] to comply with the measure contained in the third operative paragraph of the Order issued by [the] Court."

6. The brief of January 21, 2003, and its attachments, in which the Commission presented its comments on the second report of the State (*supra* fifth having seen paragraph). In this respect, it expressed "its profound concern because," in the said document, Venezuela "limit[ed] itself to repeating the contents of its first report and [did] not provide any information that [would show...] that the provisional measures ordered by the Court were being complied with effectively." In this brief, the Commission requested the Court "to urgently summon the parties to a public hearing at its seat during its next session in order to evaluate the State's compliance with the provisional measures."

7. The Order of the President of January 24, 2003, in which, in consultation with all the judges of the Court, he decided:

1. To convene the State and the Inter-American Commission on Human Rights to a public hearing to be held at the seat of the Inter-American Court of Human Rights on February 25, 2003, from 9.00 a.m. to 1.00 p.m., so that the Court may hear their points of view on the facts and circumstances relating to the implementation of provisional measures in the *Liliana Ortega et al.*, *Luis Uzcátegui* and *Luisiana Ríos et al.* cases.

[...]

8. The communication of the Commission of January 27, 2003, in which it requested the Court to hear the testimony of Luisiana Ríos and Armando Amaya, *inter alia*, if it decided to convene a public hearing.

9. Note CDH-S/060 of January 27, 2003, in which the Secretariat requested the Commission to submit the purpose of the testimony (*supra* eighth having seen paragraph), by January 29, 2003, at the latest, in order to present this information to the President.

10. The brief of January 30, 2003, in which the Commission advised that the purpose of the testimony of Luisiana Ríos and Armando Amaya (*supra* ninth having seen paragraph) was to reveal the "threats, and physical and verbal attacks that they had received from supporters of the governing party in Venezuela, while exercising their work as journalists over the last year."

11. Notes CDH-S/ 074 and CDH-S/075 of January 31, 2003, in which the Secretariat, on the instructions of the President, forwarded to the State the offer of testimony proposed by the Commission (*supra* eighth and ninth having seen paragraphs), so that it could present its respective comments.

12. The brief of February 3, 2003, in which the State indicated that "it ha[d] no objection to [the witnesses proposed by the Commission being heard] at the public hearing."

13. The Order of the President of February 6, 2003, in which, in consultation with all the judges of the Court, he decided:

1. To convene the representatives of the Inter-American Commission on Human Rights and the State of Venezuela to a public hearing to be held at the seat of the Inter-American Court, at 10.30 a.m. on February 17, 2003, to receive the statements of the said witnesses and for the Court to hear their points of view on the facts and circumstances relating to the implementation of the provisional measures in the Liliana Ortega *et al.*, Luis Uzcátegui, and Luisiana Ríos *et al.* cases.

[...]

4. To convene Luisiana Ríos to appear before the Inter-American Court of Human Rights at 10.30 a.m. on February 17, 2003, to give testimony on "[t]he threats, and physical and verbal attacks that [she has] received from Government supporters in Venezuela, during the exercise of her work as a journalist during the last year (as of January 2002)."

5. To convene Armando Amaya to appear before the Inter-American Court of Human Rights at 10.30 a.m. on February 17, 2003, to give testimony on "[t]he threats, physical and verbal attacks that [he has] received from Government supporters in Venezuela, during the exercise of his work as a journalist during the last year (as of January 2002)."

[...]

14. The public hearing held at the seat of the Inter-American Court on February 17, 2003, at which there appeared:

For the Inter-American Commission on Human Rights:

Eduardo Bertoni, delegate
Carlos Ayala, assistant, and
Pedro Nikken, assistant

For the State of Venezuela:

Jorge Dugarte Contreras, agent, and
Gisela Aranda, assistant

15. The testimony of Armando Amaya at the public hearing, which is summarized as follows:

a) He is a Venezuelan national, resident in Caracas, a camera assistant - photographic reporter - for the company *Radio Caracas Televisión*. Owing to his work, one day while covering a news item in the Cajigal Observatory, he and his team were attacked by some Government supporters, who shouted verbal abuse at them, insulted them, threw stones and, despite this, they

were unable to obtain help from any official. They were able to exit into the avenue, where they were attacked by "motorcyclists, by elements [who threw] stones [at them], shouted slogans that [they] were charlatans, who should not be there."

b) On another occasion, while he and his team were covering a news item, a soldier approached to warn them that they should not be in that place and, since they remained there, "carrying out [their] work, the man [returned] and [told them] 'well, I can no longer be responsible for you, I have already told you, I don't know what may happen to you.' [The man] departed [and when they turned round] approximately 30 people, who were Chavez supporters, were approaching [them]" so that they were closed in "with no security, and they came [...] towards [them] with metal tubes, with sticks, and they shouted [at them...] one [of them even] shouted [...] "you're lucky I haven't got a gun in my hand, because, if I did, I would kill you." They fled and found a place to hide. Subsequently, "arriving back at the [television] channel, Chavez supporters arrived and hit [...] a colleague [...], they tore off his glasses, they beat the journalist with a metal tube, which the latter managed to avoid, as did [he himself]."

c) On April 11, 2002, he and his team went to Avenida Urdaneta, where they were attacked. One of his colleagues "was struck by a stone [...], the cameraman [...] was beaten [...], the journalist was also punched, spat upon, and the car was hit, scratched, damaged [...] because [they were] from the press" and they did not want them to be there because they alleged that journalists did not tell the truth. He was very afraid.

d) On November 12, 2002, when covering a news item in the El Conde Sector, "there were some demonstrators from the Government party [...] trying to enter the Mayor's Office [...] the problems started, the stones, the tear gas [...]" and then they heard "a loud shouting [...] and saw [...] Molotov cocktails, stones and [...] suddenly [they felt] a hail of bullets, an exchange of shots [...], suddenly, when he turned to the right he saw two people [fall down] with bullet wounds and [...] [he felt] a burning sensation in his leg", which began to make him despair. When he rose, he realized that he had a bullet wound in his leg and, after this incident, "he began to receive many telephone calls on [his] cellular phone, [...] insulting [him]," during which the caller said: "How do you like what we did to you? From now on, many things will happen to you and your family."

e) He could identify the attackers as belonging to the "Government party or Chavism," because there was a woman coordinator with a T-shirt marked "*Coordinadora Simón Bolívar, Bolivariana de Venezuela*" and also "because, apart from this, they used an identity card that said 'MVR' [and] more than twenty people [...] used that identity card [with that] MVR logo [and] bearing the slogans '*Viva Chávez*' (Long live Chavez), '*Fuera los Medios*' (Away with the Press) and 'Go, because we will beat you up.'"

f) The journalists "[are] going out into the street with a great deal of fear [and] insecurity, because they [do not have] anyone to protect [them] [...] and, nonetheless, they [have] to go out into the street to do [their] work [...] and the only safety measure that [...] they [have] is a bullet-proof vest [...] a gas mask and [...] a hard hat [...] to protect [their] head, [...], because [they

have] no other [protection] for the rest [of their body]", and the vest, gas mask and hard hat are provided by the company they work for.

g) He has not received any protection from police officials of the State of Venezuelan in accordance with the provisional measures adopted by the Court on November 27, 2002.

h) No official of the police force of the Libertador Municipality of the Capital District, of the DISIP, of the Venezuela Ministry of Foreign Affairs, or other officials or agents of the State of Venezuelan has invited him to plan his personal protection in compliance with the provisional measures ordered by the Court.

i) He has not been called by the Office of the Public Prosecutor of the Bolivarian Republic of Venezuela to any working meeting or to give testimony with regard to the investigations into the complaints of the threats and attacks he has suffered.

16. The testimony of Luisiana Ríos, given to the said public hearing, which is summarized as follows:

a) She has a degree in journalism, and is a reporter for *Radio Caracas Televisión* in Venezuela and she covered news relating to the President of the Republic, Hugo Chávez. "It was at the beginning of 2002, on January 20, that [she] receive[d] the first violent attack, this was in the Cajigal Observatory, a military installation where the President of the Republic was going to broadcast a radio program as he does every Sunday and it was [her] job to cover that news item." She stated that, when she arrived "they recognized [her] and began to shout [at them], to hit the car window, to call [them] '*palangristas*', [which] is the worst insult that a journalist can receive, because [*palangristas*] are journalists [who] are paid to provide false information; they said [they were] anti-patriotic, that [they should tell] the truth [...]."

b) In view of the situation, she tried "to ask the guards for help but they did not let [her] enter; meanwhile the people shouted [at her], hit [her], struck [her], there were about fifty people, [...] and they began to shout 'we won't let you in' (*'no pasarás'*) and they all shouted in unison 'we won't let you in, we won't let you in, because you must tell the truth.'" She added that she "she begged [...] the official of the Honor Guard to let [her] by, because, otherwise, they were going to kill [her] there. In view of [her] desperation [...] they allowed [her] to go in, [...] she spoke to the person responsible for security and he told [her] that [...] the President was going to walk by that area [and] that he recommended [her] to leave because they could not provide [her] with security. [From where she was, she] saw the press car that [...] they were hitting, they were throwing stones at it, they were kicking the tires and [...] [she] was able to leave the place, and it was after that when the Commission gave [her] the precautionary measures and, despite this, the attacks continued."

c) On April 13, on the occasion of "the return of the Government of President Chávez [...] [they] were very frightened because [...] there were shots, [...they] were asked to vacate the place immediately because they

were going to take back the Palace and they said that they were going to shell it [...]. [The Palace] had been taken by soldiers who were shooting and there was an exchange of shots between the Government supporters and the soldiers who were inside the President's Palace, [...] [when she could finally] flee[, the] groups recognized [her] and began [to shout] 'there goes Luisiana Ríos kill her, grab her, you won't escape, traitor, coupist, anti-patriotic' [...]"

d) Subsequently, while she "[...] was interviewing the then Minister of Defense, [...] Captain José Rodrigo García Contreras [who] worked in the Intelligence Department of the Miraflores Palace was only about two meters away and [he called her] and [...] aggressively [said to her:] 'Luisiana go away. You don't deserve to be here in the Miraflores Palace after what happened' [...] 'if you don't leave, I'll remove you myself [...]"

e) "On September 4 [2002, she] was [...] reporting a protest march of the so-called opposition in Fuerte Tiuna and [...] the Government supporters also arrived and [...] there they threatened to kill [her], [...] they had broken bottles that they threw at the people and [...] they [began] to hit [her], [...] while [she] tried to protest to [...] the military police that they should please let [her] pass behind the line of soldiers [and] they [...] didn't say anything, they didn't protect [them] or anything, [she felt] that they jerked [her] from behind and they were strangling [her], [...] in view of the hopelessness of the situation, a soldier from another unit, from the National Guard, rescued [her...]"

f) On October 15, 2002, "[...] the President was visiting schools [and] in one of them [they] found groups of Government supporters and the military unit ordered [them] to leave the school [and] when [...] they departed, they were hit, [they] had to flee in the vehicle [...] and since then [she] no longer goes out into the street to work."

g) Groups of Government supporters installed themselves at the doors of the television company where she works and they stayed there for about four days during the first week of December. "They set up camp [...] which made it impossible for her [...] to get to [her] office, at the offices of the Channel, [she] could not enter and if [she] was able to enter [...] she] could not leave, because they threw stones, [...] they even [...] had a sign, [...] which said that [she] should take care because they would burn a family business," and then, because her "life was no longer safe [...the Channel decided] to leave [her] inside the channel's offices and now [she] no longer goes out [...] to report on events."

h) She can describe her aggressors as "Government supporters" because "these people are always identified by shirts that say '*Círculo Bolivariano*' (Bolivarian Circle), '*Coordinadora Simón Bolívar*' (Simón Bolívar Coordinator), '*Guerreros de La Vega*' (La Vega Warriors), and they always wear the red berets that identify these groups and they identify themselves as supporters of the President and defenders of the revolution [...]"

i) On one occasion, she was contacted by a corporal in the Metropolitan Police, Corporal Antonio Sánchez, "who could not protect her because he was not [given] access to events inside the Miraflores Palace [and] because the

police unit to which he belonged was intervened and its arms were confiscated by the Armaments Department of the Venezuelan Armed Forces.”

j) She finds herself in a situation of defenselessness and lack of security, owing to which she is unable to carry out the work for which her five years of university training prepared her. Furthermore, she has had to move approximately three times and now, for reasons of security, not even her parents know where she is living.

k) Following the Court’s adoption of provisional measures, no official of the State of Venezuela’s police force has granted her protection. No official of the DISIP, of the Municipal Police of the Libertador Capital District, or of any other police unit, has invited her to any meeting to plan her personal protection in accordance with the provisional measures.

l) She received a telephone call from the Assistant of the Minister of Foreign Affairs, who told her that the Minister wished to speak to her, but they did not agree on anything and, following this, she has not received any more telephone calls.

m) She has never been called by the Office of the Public Prosecutor or the Prosecutor to any working meeting to make a statement or to receive information about progress in the investigations into the complaints she had filed, and for which there is documentary evidence of the attacks and the attackers.

17. The Commission’s oral arguments, presented during the above mentioned public hearing, which are summarized below:

a) “In Venezuela, the Commission has verified with profound concern that during 2002, there has been a progressive and significant increase in threats and attacks against journalists and, in particular against those who cover political rallies. Investigations into such acts by the public authorities have not produced positive results as to the identification of the perpetrators of the acts.”

b) The “harassment, physical attacks and threats have a serious multiplier effect on the violations of the human rights of journalists, converting them into a particularly vulnerable group in the context of the permanent campaigning and massive demonstrations that Venezuela is experiencing currently.” “The five media employees for whom the provisional measures [were] requested provide an example of the violence against journalists, carried out, initiated or tolerated by the public authorities.”

c) On the occasion of the Commission’s visit to Venezuela in May 2002, the Office of the Special Rapporteur for Freedom of Expression expressed its concern about the situation of journalists. “On his arrival [in Venezuela], the OAS Secretary General emphasized publicly his concern [...] about the threats, intimidation and attacks on Venezuelan journalists.” Moreover, the OAS Permanent Council adopted Resolution 833 of December 16, 2002, in which, among other matters, it urged the Government of Venezuela to safeguard the full enjoyment of freedom of expression and of the press.

d) The State of Venezuela has not adopted any measure to protect the lives and safety of the journalists protected by the provisional measures. In the reports it has presented to the Court, it "has restricted itself to explaining that it has issued instructions to one prosecutor or another, but without even verifying whether those investigations were bearing fruit or making progress."

e) The State of Venezuela has continued to tolerate, stimulate, encourage and organize, directly or indirectly, threats and attacks against the RCTV journalists, in flagrant violation of the provisional measures and the obligation to protect and guarantee the human rights to life, safety and freedom of expression enshrined in Articles 4, 5 and 13 of the American Convention.

f) The failure to observe the measures of protection ordered by the Court reveals the impunity and complicity of the State apparatus in the face of these attacks on journalists. It is a serious setback for the inter-American system that the impunity of domestic law is transferred to the international system for the protection of human rights.

g) In its arguments, the State admits that there is a situation of lack of security in the center of Caracas and a reaction of the people against the media. "The acceptance by the agent of the State of Venezuela of what is called the justification for the attacks on the grounds of the political theory about what the role of the media in Venezuelan society should or should not be, and when he expressly said that the Government has had no alternative but to defend itself" (*infra* seventeenth having seen paragraph) should be noted. This represents an acknowledgement of a theory, and an acknowledgement of the acceptance of the theory of aggression against freedom of expression and Venezuelan journalists.

h) "No social upheaval, no act of political agitation, no situation of generalized violence in society, not even war itself can justify the State lowering the standards of protection that human dignity requires. Otherwise, there would be no justification for the international law of human rights or international humanitarian law. The argument that there is social upheaval and that the attitude of one or other sector of society is rejected is not admissible to justify using the violence of angry mobs [...] to attack defenseless journalists."

i) "It has not been possible to hold even one working meeting with either the State's agent or officials of the Ministry of Foreign Affairs or any official of the State of Venezuela [...]." The Court must conclude that the State of Venezuela has not complied with the provisional measures that it ordered, which is a very serious and unprecedented matter for the inter-American system for the protection of human rights that endangers the lives and safety of the journalists who are the beneficiaries of these protection measures.

18. The oral arguments of the State presented in the same public hearing, which are summarized as follows:

a) "Generally there is a relationship of cause and effect. [One cannot] look at matters from the middle, in general [one must] look at them from their origin, etymologically speaking, and in the context or the circumstances in which they are taking place." According to the principle that *notorian non ellen probacione*, well-known facts do not need to be proved. "Nationally and

internationally, it is not necessary to prove that the State of Venezuela is experiencing a very exceptional situation [...] that has had repercussions [...] on economic, political and social life, on all the areas in which a country's activities take place. No one is more interested in the protection of human rights than the State of Venezuela today; unquestionable and irrefutable proof of this is provided by the 1999 Constitution which incorporates and adopts in its text, [...] the protection of the global human rights system, in accordance with the most modern legislations on the matter that exist in the world."

b) "Among the phenomena and the curious events that have taken place in [Venezuela], something unusual occurred, [...] once the traditional political parties that were logically called on to exercise the task of opposition to the new Government were weakened, [...] the media occupied the place corresponding to the intermediaries between the State or the Government, to the parties, the opposition parties. They adopted an implacable position, well known inside and outside the country, against the State, against the Government and, of course, against the representatives [...] who compose the organs of the State. Evidently, [...] the Government was forced to defend itself in the face of this situation."

c) "[The] Government, with indisputable popular support, [...] was victimized by the media, as was evident to those who support the Government [...]. Consequently, [...] those grass-roots sectors, who were not exactly educated and prepared, were prejudiced against the media and reacted faced with the systematic, coordinated and massive aggression of the media against the new Government, as, unfortunately, they have reacted on some occasions."

d) "Everything [was done] to investigate the cases, such as sending letters to the competent organs of the State [...]. The Minister of Foreign Affairs telephoned *Radio Caracas Televisión* [...] and invited them to come to the Ministry of Foreign Affairs in order to coordinate with those concerned how protection would be provided, as is the case with all measures to protect human rights. They replied that they did not think it was advisable, [...] to go to the [...] Ministry, owing to the lack of security that sometimes reigned in the center of Caracas. They were offered all guarantees [...] to carry out this meeting, whose aim was to comply with the provisional measures and implement them fully and effectively [...]."

e) "In view of the silence, [it was] thought advisable, in order to have a written record of this situation, to send a letter to the people of [RCTV] in order to inform them that [the Ministry of Foreign Affairs] was always willing to duly process the precautionary or provisional measures granted to them by the inter-American human rights organs, [...] and also to provide them with any information they might require in that respect [...]."

f) "There is information that proves completely and irrefutably the State's intention to comply with the measures [...]. "There was insufficient communication and response for the State to implement these measures."

g) During the investigation "the complainants and the witnesses were interviewed and evidence related to the acts investigated was sought and collected." "There were surprising obstacles which occurred to prevent [...] the execution of the last link of the chain [through shortcomings] [... b]ut, it

is not because of these shortcomings [that one can] say that there was no intention to truly comply with such measures [...]".

h) "There has never been any negligence in compliance with the precautionary measures and the provisional measures, the responsibility for their obstruction or for the difficulties in their total execution is bipolar or bilateral, of those protected [...]."

i) "The State has been placed in the need to defend itself, [because] on many occasions false facts have been attributed to the President of the Republic, the Ministers or other representative of the State, facts that are not true, [and] the President himself or some Ministers have had to come out and say 'that is not true', and even demonstrate the falsity of what was attributed to them [...]".

j) "Dogmatically, [it is not possible] to accept [...] that the State of Venezuela did not comply with the provisional measures requested by the Inter-American Court of Human Rights [...]" "Although it is true that, perhaps, the measures requested by the Inter-American Court of Human Rights have not been complied with one hundred per cent, the average is not negative, the State of Venezuela has had adequate intention of complying with those measures."

k) The State is "very willing to comply with the provisional measures [...], as well as with any other measures in accordance with article 23 of [the] Constitution [of the Bolivarian Republic], [...] and with article 31 that [...] establishes the obligation, as members of the inter-American system for the protection of human rights to comply with those measures."

19. The documents presented by the State during the public hearing held on February 17, 2003 (*supra* fourteenth having seen paragraph), which consist of "documents relating to the measures taken by the prosecutors appointed to investigate the case and also measures taken by the Venezuelan Ministry of the Interior and Justice, in relation to the Luisiana Ríos *et al.* case."

20. The Order of the Court of February 20, 2003, in which it decided:

1. To declare that the State ha[d] not implemented effectively the provisional measures ordered by the Inter-American Court of Human Rights in its Order of November 27, 2002.

2. To reiterate to the State the requirement that it adopt forthwith all necessary measures to protect the lives and safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe.

3. To reiterate to the State the requirement that it allow the petitioners to take part in the planning and implementation of the measures of protection and, in general, keep them informed of progress in the measures ordered by the Inter-American Court of Human Rights.

4. To reiterate to the State the requirement that it investigate the facts stated in the complaint that gave rise to these measures in order to discover those responsible and punish them.

5. To call upon the State and the Inter-American Commission on Human Rights to take the necessary steps to create an appropriate mechanism to coordinate and monitor the above mentioned measures by March 21, 2003, at the latest.

6. To call upon the State to report to the Inter-American Court of Human Rights on the measures that it has adopted in compliance with this Order by February 28, 2003, at the latest.

[...]

8. To call upon the State, following its communication of February 28, 2003 (*supra* fifth operative paragraph), to continue informing the Inter-American Court of Human Rights, every two months, on the provisional measures adopted and to call on the Inter-American Commission on Human Rights to present its comments on these reports within six weeks of receiving them.

[...]

21. The third report of the State of February 28, 2003, and its attachments, with which it sent a copy of "the official letters addressed [...] [to the] Attorney General, the Ombudsman, the Minister of the Interior and Justice, and the Commander General of the Police Armed Forces of the state of Falcón, so that, within the framework of their legal jurisdiction, they should proceed to comply with the Orders" issued by the Court.

22. The communication of the State of March 12, 2003, requesting an extension to present "a report on the measures taken by the Venezuelan State to comply fully with the Orders" issued by the Court with regard to provisional measures.

23. The brief of March 13, 2003, and its attachments, in which the Commission presented its comments on the third report of the State. In this respect, it indicated that, in this report, Venezuela had referred to "formal measures taken by the State's Agent before the domestic authorities," but did not provide any information about the provisional measures, and this constituted "failure to comply with the express mandate of the Court." It added that the State "ha[d] not implemented any safety mechanism and[,...] to the contrary, the acts of intimidation to which the victims ha[d] been subjected ha[d] continued."

24. Notes CDH-S/431 and CDH-S/432 of March 26, 2003, in which the Secretariat requested the State and the Commission to forward, in their next communications, the information on compliance with "the fifth operative paragraph of the Order issued by the Court on February 20, 2003" (*supra* twentieth having seen paragraph), "without prejudice, to forwarding a brief with information in this respect at any time, if they deem this appropriate."

25. The fourth report of the State of April 25, 2003, and its attachments, in which it forwarded copies of the report presented "by the prosecutor who was assigned to investigate the case."

26. The brief of April 29, 2003, and its attachments, in which the Commission advised that "it had written to the Venezuelan State on March 13, 2003, requesting a meeting during the week of March 17, 2003," but had not received a reply to this request. The Commission had repeated this request to Venezuela on April 15, 2003, and the State had replied on April 23, 2003, that "it [was] studying an appropriate date, in order to propose it to the Commission and [...] reach agreement on a date and time for the meeting."

27. The brief of June 9, 2003, and its attachment, in which the Commission presented its comments on the fourth report of the State (*supra* twenty-fifth having seen paragraph), which are summarized as follows:

a) Regarding the investigation of the facts, Venezuela only indicated that information had been exchanged between the different State entities responsible for complying with the provisional measures, without providing "specific, up-to-date information on the steps taken in order to safeguard the personal safety and lives of the journalists who were the beneficiaries of the measures or on the status of the investigation into the facts that gave rise to those measures." Moreover, "the State had incurred in omission, [which] in itself constitutes failure to comply with the express mandate of the Court." The fact that it presents a report does not exempt the State from its obligation to provide information on the measures its authorities are taking specifically to protect the beneficiaries. The investigations are still at the preliminary stage and, to date, no one has been accused;

b) Regarding the measures of protection, the beneficiaries are in a situation of defenselessness, owing to the State's lack of action as regards initiating measures to provide the necessary protection, and this facilitates the continuance of acts of intimidation and threats. The vulnerability of the journalists protected by the provisional measures persists, as a result of the current political context in Venezuela; and

c) Regarding the monitoring mechanism, the Commission tried to set a date for a meeting with the Venezuelan authorities, but did not receive a useful reply, and there are serious problems in the coordination that should be organized by the State to ensure that implementation of the measures is previously planned with the beneficiaries.

28. Note CDH-S/1041 of September 5, 2003, in which the Secretariat requested the State to present the fifth report on implementation of the provisional measures by September 11, 2003, at the latest.

29. The brief of September 29, 2003, and its attachments, in which the Commission submitted to the Inter-American Court, pursuant to Article 63(2) of the American Convention, Article 25 of the Rules of Procedure of the Court, and Article 74 of the Rules of Procedure of the Commission, a request for expansion of the provisional measure in favor of Carlos Colmenares, Noé Pernía and Pedro Nikken, employees of the television channel, *Radio Caracas Televisión* (RCTV).

30. The Order of the President of October 2, 2003, in which, in consultation with all the judges of the Court, he decided:

1. To reiterate to the State the requirement that it adopt, forthwith, all necessary measures to protect the lives and safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe

2. To reiterate to the State the requirement that it adopt, forthwith, all necessary measures to protect the lives and safety of Carlos Colmenares, Noé Pernía and Pedro Nikken.

3. To order the State to allow the petitioners to participate in the planning and implementation of the protection measures and, in general, to keep them informed of progress in the measures ordered.

4. To order the State to investigate the facts stated in the complaint that gave rise to these measures in order to identify and punish those responsible.

5. To order the State to inform the Inter-American Court of Human Rights about the measures adopted in compliance with this Order by October 16, 2003, at the latest.

6. To order the Inter-American Commission on Human Rights to present any comments it deems pertinent to the Inter-American Court of Human Rights within a week of notification of the State's report.

7. To order the State, subsequent to its first communication (*supra* fifth operative paragraph), to continue informing the Inter-American Court of Human Rights, every two months, about the measures adopted and to order the Inter-American Commission on Human Rights to submit its comments on these reports within six weeks of receiving them.

[...]

31. The communication of the State of October 14, 2003, advising that the State's Agent, Jorge Duarte Contreras, "ha[d] decided to withdraw from this position definitively.

32. The communication of October 30, 2003, in which the State appointed Fermín Toro as Agent before the international human rights organizations.

33. The Order of the Court of November 21, 2003, in which it decided:

1. To ratify all the terms of the Order of the President of the Inter-American Court of Human Rights of October 2, 2003.

2. To reiterate to the State the requirement that it adopt, forthwith, all necessary measures to protect the lives and safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos y Argenis Uribe.

3. To order the State to adopt and maintain all necessary measures to protect the lives, safety and freedom of expression of Carlos Colmenares, Noé Pernía and Pedro Nikken, employees of the television channel, *Radio Caracas Televisión* (RCTV).

4. To order the State to allow the petitioners to participate in the planning and implementation of the protection measures and, in general, to keep them informed of progress in the measures ordered.

5. To order the State to investigate the facts stated in the complaint that gave rise to these measures in order to identify and punish those responsible.

6. To order the State to inform the Inter-American Court of Human Rights about the measures adopted in compliance with this Order by November 28, 2003, at the latest.

7. To order the Inter-American Commission on Human Rights to present any comments it deems pertinent to the Inter-American Court of Human Rights within a week of notification of the State's report by the Inter-American Court of Human Rights.

8. To order the State, subsequent to its first communication (*supra* sixth operative paragraph), to continue informing the Inter-American Court of Human Rights, every two months, about the measures adopted and to order the Inter-American Commission on Human Rights to submit its comments on these reports within six weeks of notification of the State's report by the Court..

[...]

CONSIDERING:

1. That the State ratified the American Convention on August 9, 1977, and, in accordance with Article 62 thereof, accepted the contentious jurisdiction of the Court on June 24, 1981.

2. That Article 63(2) of the American Convention establishes that, “[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, in matters it has under consideration, adopt such provisional measures as it deems pertinent, and in cases not yet submitted to its consideration, it may act at the request of the Commission.”

3. That, in the terms of Article 25(1) and 25(2) of the Rules of Procedure of the Court:

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

With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

4. That Article 1(1) of the Convention establishes the obligation of States Parties to respect the rights and freedoms recognized therein and to ensure their free and full exercise to all persons subject to their jurisdiction.

5. That, in general, the purpose of provisional measures in domestic legal systems (internal procedural law) is to protect the rights of the parties in dispute, ensuring that the judgment on merits is not prejudiced by their actions *pendente lite*.

6. That the purpose of urgent and provisional measures in international human rights law goes further because, in addition to their essentially preventive nature, they protect fundamental rights, inasmuch as they seek to avoid irreparable damage to persons.

7. That, after examining the documents in the file on the present measures, the Court deems it necessary to reiterate to Venezuela that it is the State’s responsibility to adopt safety measures to protect all persons subject to its jurisdiction and that this obligation is even plainer with regard to those persons who are involved in proceedings before the organs of protection of the American Convention.

8. That, when ordering the State of Venezuela to adopt provisional measures in favor of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe, the Court also ordered it to provide information on the implementation of these measures (*supra* first and twentieth having seen paragraphs). It had ruled similarly when it adopted the expansion of measures in favor of Carlos Colmenares, Noé Pernía and Pedro Nikken (*supra* thirty-third having seen paragraph).

9. That, from a detailed examination of the information in the file on provisional measures, the Court has verified that Venezuela has submitted four reports. However, the information provided does not reflect effective implementation of the measures requested by the Court with regard to protection of the lives and safety of

the beneficiaries, participation of the petitioners in the coordination and planning of the means of protection, investigation of the facts that gave rise to the measures, and submission to the Court of reports by the State every two months. Moreover, the time limit for presenting the pending reports on the provisional measures expired on September 11, 2003, on the urgent measures of expansion on October 15, 2003, and on the expanded provisional measures on November 28, 2003, and these reports have not been received.

10. That Article 68(1) of the Convention stipulates that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties."

11. That the obligation to comply with the provisions of the Court's judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which, a State must comply with its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty¹.

12. That the obligation to report to the Court is not complied with by the mere formal presentation of a document to the Court, but is a dual obligation, which, for effective compliance, requires the formal submission of a document within the time limit, with specific, true, current and detailed information on the issues to which this obligation refers.

13. That the State must comply with all the elements decided by the Court in its Orders, and submit periodic reports on all the measures that it has adopted to protect the lives and safety of the persons protected by the provisional measures in this case; on the investigation of the facts that gave rise to them, and on the measures taken to allow the petitioners to participate in the implementation of those measures. The State's obligation to inform the Court of the manner in which it is complying with the Court's decision is fundamental for the assessment of the case.

14. That, in the terms of Article 65 of the American Convention,

[t]o each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

15. That Article 30 of the Statute of the Court establishes that,

[t]he Court shall submit a report on its work of the previous year to each regular session of the OAS General Assembly. It shall indicate those cases in which a State has failed to comply with the Court's ruling. It may also submit to the OAS General Assembly proposals or recommendations on ways to improve the inter-American system of human rights, insofar as they concern the work of the Court.

¹ Cf. *Benavides Cevallos case. Compliance with judgment*. Order of the Inter-American Court of Human Rights of September 9, 2003, third considering paragraph; *Baena Ricardo et al. case. Compliance with judgment*. Order of the Inter-American Court of Human Rights of June 6, 2003, fourth considering paragraph; and *"The Last Temptation of Christ" case (Olmedo Bustos et al). Compliance with judgment*. Order of the Inter-American Court of Human Rights of November 28, 2002, third considering paragraph.

16. That, since the State has not implemented effectively the measures ordered by the Court, has not investigated the facts that gave rise to them, has not allowed the petitioners to take part in the planning and coordination of the means of protection, and has not complied fully with the reporting obligation, should the current situation persist, the Court, in application of Article 65 (*supra* fourteenth considering paragraph) and Article 30 of its Statute (*supra* fifteenth considering paragraph), will include this Order in its Annual Report for 2003, so that it may be submitted to the consideration of the General Assembly of the Organization of American States.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred by Articles 63(2), 65 and 68 of the American Convention on Human Rights, Article 30 of its Statute and Articles 25 and 29(2) of its Rules of Procedure,

DECIDES:

1. To reiterate that the State has not implemented effectively the different provisional measures ordered by the Inter-American Court of Human Rights in the instant case.
2. To declare that the State has failed to comply with the obligation imposed on it by Article 68(1) of the American Convention on Human Rights.
3. To declare that the State failed to comply with the obligation to inform the Inter-American Court of Human Rights on the implementation of the measures it had ordered
4. Should the current situation persist, to inform the General Assembly of the Organization of American States, in application of Article 65 of the American Convention on Human Rights, and Article 30 of the Statute of the Inter-American Court of Human Rights, of the State's failure to comply with the decisions of this Court.
5. To reiterate to the State the requirement that it adopt, forthwith, all necessary measures to protect the lives and safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Carlos Colmenares, Noé Pernía and Pedro Nikken.
6. To reiterate to the State the requirement that it allow the petitioners to participate in the planning and implementation of the measures of protection and that, in general, it should keep them informed on progress in the measures decided by the Inter-American Court of Human Rights.
7. To reiterate to the State the requirement that it investigate the facts stated in the complaint that gave rise to these measures in order to discover those responsible and punish them.

8. To call upon the State to inform the Inter-American Court of Human Rights about the measures it has adopted to comply with the Order by January 7, 2004, at the latest.

9. To call upon the Inter-American Commission on Human Rights to present to the Inter-American Court of Human Rights any comments it deems pertinent within 15 days of notification of the State's report.

10. To call upon the State, subsequent to the report referred to in the eighth operative paragraph, to continue informing the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and to call upon the Inter-American Commission on Human Rights to present its comments on these reports within six weeks of receiving them.

11. To notify this Order on compliance to the State and to the Inter-American Commission on Human Rights.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary