

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS \*  
OF SEPTEMBER 7, 2012**

**PROVISIONAL MEASURES  
REGARDING THE DOMINICAN REPUBLIC**

**MATTER OF HAITIANS AND DOMINICANS OF HAITIAN  
ORIGIN IN THE DOMINICAN REPUBLIC**

**HAVING SEEN:**

1. The brief of the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) of May 30, 2000, and the attachments thereto, by which it submitted to the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) the request for provisional measures in favor of Haitians and Dominicans of Haitian origin who are subject to the jurisdiction of the Dominican Republic (hereinafter also “the State”) and who are at risk of being collectively “expelled” or “deported”, in relation to case No. 12.271. On July 12, 2012, the Commission lodged before the Court case No. 12.271, *Benito Tide Mendez et al. v. The Dominican Republic*, which was notified to the parties on August 28, 2012.

2. The Orders of the Inter-American Court of June 16; August 7 and 18; September 14, and November 12, 2000; May 26, 2001; October 5, 2005, and February 2, 2006, in which measures were adopted in favor of Benito Tide Mendez, Antonio Sensión (hereinafter, also “Mr. Sensión”), Andrea Alezy, Janty Fils-Aimé, William Medina Ferreras (hereinafter also “Mr. Medina”), Berson Gelin (hereinafter also “Mr. Gelin”), Rafaelito Pérez Charles, Priest Pedro Ruquoy and Solain Pie or Solain Pierre or Solange Pierre<sup>\*\*</sup> (hereinafter “Solange Pierre” or Mrs. “Pierre”) and her four children.

3. The Order of the Court of July 8, 2009, whereby the Court ordered that the provisional measures in favor of Rafaelito Pérez Charles, Andrea Alezy and priest Pedro Ruquoy be rescinded.

4. The Order of the Court of December 1, 2011, whereby it ordered that the provisional measures in favor of Benito Tide Méndez be rescinded; it declared that the provisional measures in relation to Janty Fils-Aimé be rescinded; it decided that the measures in favor of Messrs. Sensión, Medina, and Gelin be maintained for at least eight months as of notification of said Order; it ordered the State to submit a

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\* Judge Rhadys Abreu Blondet, a Dominican national, excused herself from considering the provisional measures in the instant case, in accordance with Articles 19(1) of the Rules of Procedure of the Inter-American Court of Human Rights.

\*\* It is noted that throughout the instant case, the parties have made reference to Solain Pie or Solain Pierre or Solange Pierre. The Court points out that this is the same person and, henceforward, the Court shall refer to her as “Solange Pierre or Mrs. Pierre.”

clear and detailed report on the specific actions taken towards implementation of those measures and ordered the Commission and the representatives of the beneficiaries (hereinafter, the "representatives") to submit a report "proving the current situation of extreme gravity and urgency to protect irreparable damage regarding each of the mentioned beneficiaries, in relation to the purpose for which the present measures were adopted." Likewise, it ordered that the measures in favor of Solange Pierre and her children be maintained.

5. The Order of the Court of February 29, 2012, through which it "[d]eclare[d] that the provisional measures granted in favor of [...] Solange Pie[rre] be rescinded" and it ordered that the provisional measures in favor of Messrs. Sension, Medina, Gelin and Mrs. Pierre's four children be maintained for an additional period of at least six months as of the notification of said Order. Likewise, it requested that the State present a detailed report on "the specific actions taken for the implementation of the present measures", and that the State, the representatives and the Inter-American Commission present a clear and detailed report on the current situation of extreme gravity and urgency to protect each of Mrs. Pierre's children from irreparable harm, in relation to the purpose for which these measures were adopted and, as appropriate, provide grounds for maintaining the measures in their favor", pursuant to the information required in the twenty-first, twenty-ninth, and forty-eighth considering paragraphs of said Order.

6. The reports presented by the State on June 29 and July 13, 2012.

7. The representatives' briefs submitted on June 1 and 22, July 5, and August 2, 2012.

8. The communication of this Secretariat of July 20, 2012, in which, *inter alia*, on the instructions of the President of the Court (hereinafter "the President") the representatives were granted a non-renewable term that expired on July 26, 2012, to forward the respective observations to the state's report of July 13, 2012, and to refer specifically to the current situation of Messrs. Sension, Medina, and Gelin, in light of that ordered by the Court in considering paragraph 33 and the seventh Operative Paragraph of the Order of December 1, 2011.

9. The brief of the Inter-American Commission of July 31, 2012.

10. The State's brief of August 21, 2012, in which it referred to the observations of the Commission and of the representatives of July 31 and August 2, 2012, respectively, and it did not present additional information regarding the implementation of the provisional measures. In this respect, the Court notes that the State had already presented the corresponding information (*supra* having seen paragraph 6) and that the brief of August 21 did not respond to the request made by the Court. Based on the above, the Court decides not to admit said State's communication.

#### **CONSIDERING THAT:**

1. The Dominican Republic has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since

April 19 1978, and, in accordance with Article 62 thereof, it accepted the compulsory jurisdiction of the Court on March 25, 1999.

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

3. According to the provision established in Article 63(2) of the Convention, provisional measures ordered by the Court are binding on the State in conformity to a basic principle of the law of international responsibility of States, as supported by international case law, under which States are required to comply with international treaty obligations in good faith (*pacta sunt servanda*).<sup>1</sup>

4. In this regard, the pertinent part of Article 27 of the Court’s Rules of Procedure (hereinafter “the Rules of Procedure”)<sup>2</sup> establishes that:

1. At any stage of proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, on its own motion, order such provisional measures as it deems appropriate, pursuant to Article 63.2 of the Convention.

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

[...]

5. Under International Human Rights Law, provisional measures are not only preventive in nature, in the sense that they preserve a legal situation, but mostly protective, because they protect human rights, inasmuch as they seek to avoid irreparable harm to persons. Thus, provisional measures become a true jurisdictional guarantee of a preventive nature.<sup>3</sup>

6. Article 63.2 of the Convention requires that, for the Court to order provisional measures, three conditions must be met: (i) “extreme gravity”; (ii) “urgency,” and (iii) the need “to avoid irreparable harm to persons.” These three conditions must coexist and be present in any situation in which the Court’s intervention is requested. Similarly, these three conditions must persist for the Court to maintain the protection ordered. If one of the conditions is no longer valid, the Court must assess the pertinence of maintaining the protection ordered.<sup>4</sup>

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<sup>1</sup> Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of June 14, 1998, sixth considering paragraph; and *Matter of Gladys Lanza Ochoa.* Provisional Measures regarding Honduras. Order of the Court of June 28, 2012, second considering paragraph.

<sup>2</sup> Rules of Procedure of the Court approved at its eighty-fifth regular session, held from November 16 to 28, 2009.

<sup>3</sup> Cf. *Case of “La Nación” newspaper.* Provisional Measures regarding Costa Rica. Order of the Court of September 7, 2001, fourth considering paragraph, and *Matter of Wong Ho Wing.* Provisional Measures regarding Peru. Order of the Court of June 26, 2012, fourth considering paragraph.

<sup>4</sup> Cf. *Case of Carpio Nicolle.* Provisional Measures regarding Guatemala. Order of the Court of July 6, 2009, fourteenth considering paragraph, and *Case of Gladys Lanza Ochoa,* third considering paragraph.

7. In the context of provisional measures, the Court may only consider arguments that are directly and strictly related to the extreme gravity, urgency, and the necessity to prevent irreparable damage to persons which gave rise to the adoption of the measures or if equally serious and urgent fresh circumstances warrant they be maintained. This does not constitute a prejudgment in the possible case on merits. Any other matter can only be brought forward by consideration by the Court in the course of the pertaining contentious cases.<sup>5</sup>

8. In the Court's Order of February 29, 2012 (*supra* having seen paragraph 5), it was decided, *inter alia*, in accordance with the twentieth, twenty-first, and twenty-ninth considering paragraphs of the Order, to require that the State: 1) continue to implement the necessary and sufficient measures to: a) continue with the periodic meetings of the working group composed of State officials, with the participation of the beneficiaries and/or their representatives, in order to collaborate on the implementation of the measures ordered by the Court, and (b) submit a report with the timetable of the next meetings; and 2) by mutual agreement with the children of Mrs. Solange Pierre, establish the most appropriate mechanism to respond to any eventuality related to their safety and personal integrity.

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A) *Regarding the implementation of the provisional measures*

A.1) *Regarding the actions tending to coordinate the implementation of the measures*

9. In its brief of June 29, 2012, the State indicated that Lieutenant Colonel Alfonso Maria Duvergé Mateo (hereinafter "Colonel Duvergé") is the authority in charge of acting as liaison between the Dominican State and the beneficiaries of the provisional measures. Afterwards, in its report of July 13, 2012, the State ratified the aforementioned and pointed out that Colonel Duvergé is the Commander of DINTEL of the National Police Force. It indicated that there is no reason whatsoever why the beneficiaries should not trust him. In its report of June 29, 2012, the State also noted, referring to Mrs. Pierre's children, that "they cannot be granted [...] the protection they [...] do not wish to receive [...] since] multiple work meetings have been held in order to make progress in compliance with the provisional measures in question, but it has been impossible to set a meeting," for that effect. In its report of July 13, 2012, it pointed out that the creation of a "suitable mechanism" is, without doubt, of a relative nature and will depend on the interests of the parties and the actual possibilities to carry it out.

10. In its brief of June 1, 2012, the representatives expressed their concern for the fact that state agents in uniform (on May 18, 2012) and dressed as civilians (on May 28, 2012) approached the home of the Pierre family without serving prior notice, as well as for the lack of formality shown by the Dominican State. They stated that, on both occasions, said officials only asked for Mrs. Pierre's sons and that, when they could not find them, they left the name and contact information of Colonel Duvergé.

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<sup>5</sup> Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 29, 1998, sixth considering paragraph; and *Matter of Gladys Lanza Ochoa*, fourth considering paragraph.

Subsequently, in their brief of June 22, 2012, they reiterated their concern for the “high level of informality and pressure that do not [...] provide the confidence necessary to let the officials that have shown up at the house approach Mrs. Pierre’s children.” In that same brief, they stated that Colonel Duvergé had met with Mrs. Jenny Morón (hereinafter “Mrs. Moron”), attorney of the Dominican-Haitian Women’s Movement (hereinafter, “MUDHA”), but that his role, regarding the work with the beneficiaries, was not clear. They further alleged that Colonel Duvergé “was allegedly trained to implement the provisional measures related only to the protection of Mrs. Pierre’s children, and the Sension, [...] and Gelin families,” but that there is no one responsible for the Medina Ferreras family. In their observations of June 1, 2012, the representatives informed that the State has not yet established “the most suitable mechanism to respond to any eventuality related to the safety and personal integrity” of Mrs. Pierre’s children.

11. In its observations of July 31, 2012, the Commission mentioned that the State “referred to [Colonel] Duvergé and the state agency to which he belongs as one involved in the implementation of the provisional measures” for the first time in its brief filed on July 13, 2012. It also stated that

it agrees with the considerations made by the petitioners regarding the limitation of the powers granted to [Colonel] Duvergé as a police agent, taking into consideration that the issuing of the safe-conducts would be linked to the competent immigration agencies.

12. The Commission also “pointed out that during the more than 10 years these provisional measures were in force, the parties did not consider that the measures of personal protection were adequate to respond to [...] the beneficiaries’ specific situation of risk.” The Commission also observed “with concern that, according to its opinion, “the State has not complied with that ordered by the Court in its Order of February 29, 2012, and that, additionally, it has made a restrictive interpretation of the obligations in force within the framework of the present provisional measures.”

*A.2) Regarding a work group or team that collaborates in the implementation of the measures ordered by the Court and the schedule for the work meetings*

13. On June 29, 2012, the State informed that Colonel Duvergé summoned Mrs. Morón and Mrs. Siany Jeans Yudel (hereinafter “Mrs. Yudel”), from MUDHA, “to appear and [...] and express their opinion regarding the coordination of the provisional measures”, but that they failed to appear.

14. On their part, the representatives stated that Mrs. Morón and Mrs. Yudel held a meeting with Colonel Duvergé on June 18, 2012, regarding the implementation of the measures and that they requested the appointment of a high-ranking person in charge of the follow-up and coordination of the provisional measures; to be informed beforehand who they may contact in case of emergency and all communication with Mrs. Pierre’s children be carried out through the representatives.

15. In its observations of July 31, 2012, the Commission indicated that

the State did not present information on the schedule of meetings in order to do a follow-up of the provisional measures, but instead it referred to two ‘summons’ served on the representatives so they would appear before the offices of [Colonel] Duvergé, which in fact took place and during which the representatives made their petitions.

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16. This Court points out that, even though the State indicated that Colonel Duvergé is the contact person for the beneficiaries, it limited to mentioning the actions carried out with regard to Mrs. Pierre's children and not in relation to the other three beneficiaries of these measures. Likewise, the State did not forward a schedule of meetings for the implementation of the measures as ordered by the Court in its Order of December 1, 2012.

17. Based on the aforementioned, the Tribunal concludes that there has not been sufficient, permanent, and adequate communication between the beneficiaries of the measures or their representatives and the State to agree on the implementation thereof.

*B) Regarding the situation of the children of Mrs. Pierre*

18. By means of its brief of June 29, 2012, the State mentioned that,

[...] there is no urgency, let alone imminence in the materialization of a grave threat that could cause irreparable damage to the beneficiaries [...] and that, specifically, compliance with the Court's order by the State is not of interest to the beneficiaries or their representatives (mainly Mrs. Solain Pierre's four children) [...]

19. The State also observed that the representatives "did [...] not forward information to the Court regarding the occurrence of [any] specific fact that would place them at risk of suffering damage to their lives and personal integrity [...]." In its report of July 13, 2012, it once again pointed out that the representatives had not provided [any] new piece of information regarding the persistence of the alleged situation of "[...] extreme gravity and urgency and the need to avoid irreparable damage [...]" and that there is no evidence on record proving that the threats described by the representatives were issued. The State indicated that the arrests mentioned by the representatives (*infra* considering paragraph 21) "[...] had not been addressed specifically towards [Mrs.] Pierre's four children, but instead it [...] was a national campaign seeking to thwart the acts of violence in the country [...]." Finally, the State requested that the Court rescind the measures ordered in favor of the children of Mrs. Pierre.

20. In its brief of July 5, 2012, the representatives referred to "the situation of risk suffered by the four children of [Solange] Pierre," by indicating that

it continues despite [her] death due to the strong relationship established between the Pierre surname and the movement[s] in support of Haitian immigrants and Dominicans of Haitian origin; and because of the involvement of some of her children in the organization founded by Sonia Pierre, MUDHA.

21. Specifically, of Mrs. Pierre's children, Solange Manuela Dandre Pie works in the legal department of MUDHA, and because of that, according to the representatives, she endures public exposure on behalf of the organization, and Charlemagne Dandre Pie works in the transportation department of MUDHA. Additionally, they indicated that they had experienced "[...] direct intimidations". In this sense, they stated that on March 2, 2012, Humberto Alejandro and Minerva Leticia, both with surname Dandre Pie (hereinafter, respectively, "Humberto" and "Leticia"), along with two of Mrs. Pierre's grandchildren, were stopped by two police agents on their way home. According to them, the police officers requested to see the documents of Mrs. Pierre's children and then, let them go, but continued to follow them and Humberto and

Leticia returned home only once they had left. Finally, they mentioned that on March 17, 2012, Mrs. Pierre's four children, along with their children and couples, were detained at an immigration police control post where they were identified as Mrs. Pierre's children, in such a manner that they felt threatened. The representatives requested that the Court maintain the provisional measures in favor of Mrs. Pierre's four children, "taking into consideration the multiple confrontations they have had with state agents, especially in front of their home or on the way home."

22. In its observations of July 31, 2012, the Commission pointed out "that the situation of risk of the children of Sonia Pierre is related to the activities their mother carried out as a human rights defender, which implied certain [(sic)] that were transferred on to her next of kin and that would continue in the present." The Commission requested that the Court "maintain the provisional measures" in favor of Mrs. Pierre's children, "based on the persistence of certain factors that could put at risk the life and physical integrity of the beneficiaries, and the lack of specific information to the contrary filed by the State, along with the lack of implementation of protective measures," until "there is sufficient information indicating that the requirements for their maintenance no longer persist."

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23. Based on the foregoing, in relation to the children of Solange Pierre, the State did not refer to the specific situation of each of them, even though it had previously requested the rescission of the measures adopted in their favor since it understood that, upon the death of their mother, the reasons for the respective provisional measures had ceased to exist<sup>6</sup>. Likewise, the Court notes that the State carried out several actions through Colonel Duvergé to establish contact and hold meetings with Mrs. Pierre's children, even though there were various difficulties based on the way in which it was done. In turn, the representatives argued that they have been the target of acts of harassment, like the "detention" of the children of Mrs. Pierre together with their next of kin in a immigration police control post, as well as two of her children being followed, and the fact that two of them currently work for MUDHA, which would place them at risk.

24. Upon ordering the provisional measures in favor of Mrs. Pierre, the Court considered that their goal was her protection given that she had offered her testimony in the present provisional measures on August 8, 2000<sup>7</sup> with regard to the situation of the beneficiaries she represented. Upon her return to the Dominican Republic, she was the target of persecution and threatening telephone calls, based on which the measures were adopted in her favor, and subsequently, they were expanded in favor of her children as well.<sup>8</sup> Therefore, the purpose of protecting the life and personal integrity of said persons was to avoid threats or reprisals linked to the statements

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<sup>6</sup> Cf. *Matter of Haitians and Dominicans of Haitian origin in Dominican Republic*. Provisional Measures regarding the Dominican Republic. Order of the Court of February 29, 2011, twenty-fifth considering paragraph.

<sup>7</sup> Cf. *Matter of Haitians and Dominicans of Haitian origin in Dominican Republic*. Provisional Measures regarding the Dominican Republic. Order of the Court of August 18, 2000, twelfth considering paragraph.

<sup>8</sup> Cf. *Matter of Haitians and Dominicans of Haitian origin in Dominican Republic*. Provisional Measures regarding the Dominican Republic. Order of the Court of February 2, 2006, fifteenth and sixteenth considering paragraphs.

rendered before the Court. Upon maintaining the measures, the Court took into consideration that she had already rendered her statement, but in consideration of her situation at that time and the fear expressed by her due to the facts that occurred after her statement, and Mrs. Pierre's specific circumstances, it considered that her situation and that of her children should be considered as of extreme gravity and urgency.

25. Despite the aforementioned, this Court points out that the reasons stated by the representatives regarding the children of Mrs. Pierre in relation to certain facts they consider to be threats or acts of harassment, and the fact that Solange Manuela Pierre and Charlemagne Dandre Pierre currently work at MUDHA, are not directly related to the purpose of the measures originally adopted. Moreover, the Court takes note of that mentioned by the Inter-American Commission regarding "the lack of implementation of protection measures" and "the lack of specific information" that contradicts the alleged "persistence of certain factors" that would put at risk the integrity and life of Mrs. Pierre's children. Without detriment of the aforementioned, it also observes that the Commission based the alleged persistence of the situation of risk on the alleged relationship with "the activities carried out by [Solange Pierre] as a human rights defender" (*supra* considering paragraph 22). The Court considers that this reference is of a general nature and it is not sufficient to sustain a situation of extreme gravity and urgency related to possible irreparable damage to Mrs. Pierre's children. In this regard, the Court recalls that the principle of *prima facie* assessment of a case and the application of assumptions in cases when protection is required has led the Court, or its Presidency, to order provisional measures on many occasions.<sup>9</sup> Without detriment to the foregoing, the need to maintain the protective measures calls for a more strict evaluation by the Court of the existence of the situation that gave rise to those measures.<sup>10</sup>

26. Based on the aforementioned, in light of the information presented, the Court concludes that, with regard to the children of Solange Pierre, the requirements established in Articles 63(2) of the Convention and 27 of the Rules of Procedure are not present, and even though the State has not adequately complied with the provisional measures ordered, it is appropriate to rescind them.

*C) Regarding the situation of Messrs. Sension, Gelin, and Medina*

27. In its report of June 29, 2012, the State indicated that Mr. Sension's safe-conduct was renewed in April 2010; that he already has a Dominican identification and voter's card and thus, the risk of being repatriated has ceased. It also observed that the beneficiary did not mention any news or the occurrence of any fact that put his life and personal integrity at risk. The State also indicated in its report of July 13, 2012, that the representatives indicated "they are not aware of the whereabouts" of Mr. Sension at a meeting held on June 18<sup>th</sup> and therefore the Court should rescind the

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<sup>9</sup> Cf. *Case of Raxcacó Reyes et al.* Provisional Measures regarding Guatemala. Order of the Court of August 30, 2004, tenth considering paragraph, and *Matter of Gladys Lanza Ochoa*, twenty-second considering paragraph.

<sup>10</sup> Cf. *Matter of the Kankuamo Indigenous People.* Provisional Measures regarding Colombia. Order of the Court of April 3, 2009; seventh considering paragraph, and *Case of the 19 Tradesmen v. Colombia.* Provisional Measures regarding Colombia. Order of the Court of June 26, 2012, twenty-third considering paragraph.

measures in his favor as it did in the cases of Messrs. Rafaelito Pérez Charles and Andrea Alezy in its Order of July 8, 2009.

28. On that occasion, the State expressed that Mr. Gelin's safe-conduct was renewed and delivered and that it does not have an expiration date. It mentioned that, given he has that safe-conduct, the beneficiary's risk to be repatriated has ceased. The State also indicated that Mr. Gelin has not mentioned any news or the occurrence of any fact that could put his life and personal integrity at risk.

29. The State also referred to the fact that Mr. Medina's safe-conduct was renewed in March 2010 and that he already has his Dominican identification and voter's card, thus the risk of being repatriated has ceased. It also observed that this beneficiary has not mentioned any news or the occurrence of any fact that could put his life and personal integrity at risk.

30. Finally, the State mentioned that Messrs. Gelin and Medina are living in Haiti voluntarily and that "the Dominican State can only adopt measures regarding compliance with the American Convention [...] in relation [to] the people who live within the territory over which it exercises sovereignty." It also indicated that "[n]either of them has any objection by the Dominican authorities to reside in the country, since Mr. [...] Gelin, in his capacity as Haitian citizen, has [a] safe-conduct [...] and Mr. [...] Medina [...] is a Dominican citizen."

31. The representatives did not submit specific and updated information on the situation of Messrs. Sensión, Gelin, and Medina, regarding the level of risk in relation to the enjoyment of their rights. They did present considerations on the implementation of said measures in their brief of June 22, 2012, and they informed that Colonel Duvergé was in charge of implementing the provisional measures in favor of Messrs. Sensión and Gelin, but he has not done so. On that occasion, they indicated that Mr. Medina lives on the Haitian margin of the border; that the measures in his favor were not implemented and that he was not included in the list of the "families" regarding which Colonel Duvergé must implement the measures.

32. The representatives requested that the Court "reiterate to the Dominican State the need to comply with all the measures ordered by this Honorable Court in favor of all the families, not only the families on the Dominican side of the border."

33. In its observations of July 31, 2012, the Commission noted that

the effective return of all the beneficiaries to the Dominican Republic was not possible due to different reasons, among others, the delay in establishing an adequate mechanism to respond to their specific situation, the difficulties related to the issuing and renewal of the safe-conducts, and certain obstacles for its correct implementation, due to the apparent lack of knowledge by some state authorities of its validity.

34. It also observed

with concern that, in its last reports, the State has radically changed its position from that of 'full disposition to hand over the remaining safe-conducts' to the current one in which it considers that 'no other safe-conducts still have to be issued' and the lack of information regarding the measures adopted for the implementation of the present provisional measures.

35. The Commission requested that the Tribunal maintain the provisional measures in favor of the alleged victims of "case N° 12.271, recently submitted to the

jurisdiction of the Court" (*supra* having seen paragraph 1) until the latter adopts a final decision regarding said case. It took into consideration, *inter alia*, "the vulnerable situation in which the beneficiaries and [alleged] victims of the case are, the need to guarantee their participation in the proceedings and the context in which the accusations against Haitians or Dominicans of Haitian origin have worsened" as well as "the recent legislative reforms." It pointed out that, in its understanding, "the situation of risk [...] of Messrs. Sensi[o]n, Gelin, and Medina [...] is related[...] to the summary deportation they suffered from the Dominican Republic more than 10 years ago."

36. In relation to Messrs. Sensión, Gelin and Medina, the Court deems that the parties did not present the necessary information to evaluate whether the situation faced by the beneficiaries persists that led the Court to maintain the provisional measures adopted in their favor in 2000, that is more than 12 years ago.<sup>11</sup> To this end, the arguments presented by the Inter-American Commission regarding the alleged reasons that hindered the return of the beneficiaries to the Dominican Republic (*supra* considering paragraph 33) are not precise in relation to specific facts that may show the particular circumstances in which each one of the beneficiaries currently live. The representatives, in turn, had made reference to certain aspects related to the implementation of the measures, but not to the possible persistence of a situation of extreme gravity and urgency to the detriment of such persons (*supra* considering paragraph 31).

37. The Court recalls its opinion about the rigorous assessment it must make to decide the maintenance of the measures, in comparison with the analysis it must make to decide if they should be granted (*supra* considering paragraph 25) However, it recalls that in its Order of December 1, 2011, it indicated, in relation to Messrs. Sensión, Gelin and Medina, that:

[i]n order to evaluate whether to maintain the provisional measures, the Court finds it necessary for both the representatives and the Inter-American Commission to submit precise and detailed reports on the current situation of each of the mentioned beneficiaries with regard to the object for which the present measures were adopted. Where necessary, they must justify the reasons for maintaining the measures to their benefit with regard to their precautionary nature in relation to the merits case being processed [...]<sup>12</sup>

38. Then the Court, in view of the information presented between December 1, 2011 and February 29, 2012, determined, on the latter date, pursuant with the decisions made on December 1, 2011, it was appropriate to "maintain the [...] provisional measures in favor of Messrs. [...] Gelin[, ...] Sensión, and [Medina...] for an additional period of at least six months, [and that] the Court would assess in due course the maintenance of those measures." As it springs from the above (*supra* considering paragraph 36), after February 29, 2012, the Court did not receive precise and detailed information on the beneficiaries' situation. Without detriment to the foregoing, the Court emphasizes that the State indicated that Mr. Sensión and Mr. Medina have, apart from safe-conducts, Dominican identification and voter's cards and that Mr. Gelin has a safe-conduct without expiration date (*supra* considering

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<sup>11</sup> Cf. *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic*, *Supra* note 6, thirty-first and thirty-fourth considering paragraphs.

<sup>12</sup> Cf. *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic*. Provisional Measures regarding the Dominican Republic. Order of the Court of December 1, 2011, thirty-third considering paragraph.

paragraphs 27 to 30), information that was not contested by the representatives or the Commission.

39. The Court notes that the case related to these measures was submitted to the Court on July 12, 2012, and that in said case, Messrs. Antonio Sensión Berson Gelin and William Medina Ferreras were considered to be alleged victims.

40. As to the precautionary nature of the measures regarding the merits of the case, the Inter-American Commission made considerations on this matter (*supra* considering paragraph 35). The Court takes note of that expressed by the Commission, though it notes that from said considerations, it cannot be concluded the persistence of a situation of gravity and urgency that may cause irreparable damage.

41. Based on the foregoing, the Court considers it appropriate to order the rescission of the provisional measures with regard to Messrs. Antonio Sensión, Berson Gelin, and William Medina Ferreras, since the requirements stipulated in Articles 63(2) of the Convention and 27 of the Rules of Procedure are not present.

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42. Without detriment to the decision made by this Court, it recalls that States have the permanent and constant duty of complying with the general obligations according to Article 1(1) of the Convention, that is, to respect the rights and freedoms recognized therein and ensure to all persons subject to its jurisdiction the free and full exercise of those rights and freedoms<sup>13</sup>. In consequence, regardless of the existence of specific provisional measures, the State is specially obliged to guarantee the rights of the people in situations of risk and must expedite the investigation necessary to shed light on the facts and, if applicable, punish the responsible<sup>14</sup>.

43. The decision made by this Court does not imply, in any way, a prejudgment of the merits of the case submitted to its attention. In this respect, the Court deems necessary to emphasize that the decision regarding the provisional measures does not imply a decision on the merits of the existing controversy between the beneficiaries and the State, nor does it prejudice the State's responsibility for the reported facts or the lack thereof<sup>15</sup>. When deciding on provisional measures, the Court is only exercising its mandate according to the Convention, in cases of extreme gravity and urgency that require measures of protection in order to avoid irreparable damage to persons.<sup>16</sup>

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<sup>13</sup> Cf. *Case of Velásquez Rodríguez*. Provisional Measures regarding Honduras. Order of the Court of January 15, 1998, third considering paragraph, and *Matter of Gladys Lanza Ochoa*, *supra* note 1, twenty-fourth considering paragraph.

<sup>14</sup> Cf. *Case of Velásquez Rodríguez*, third considering paragraph, and *Matter of Gladys Lanza Ochoa*, twenty-seventh considering paragraph.

<sup>15</sup> Cf., *mutatis mutandi*, *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the President of the Court of July 13, 1998, sixth considering paragraph, and *Matter of L.M.* Provisional Measures regarding Paraguay. Order of the Court of July 1, 2011, twenty-second considering paragraph.

<sup>16</sup> Cf., *mutatis mutandi*, *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 29, 1998, seventh considering paragraph. *Case of Rosendo Cantú et al.* Provisional Measures regarding Mexico. Order of the Court of February 2, 2010, sixteenth considering paragraph.

**THEREFORE**

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

in exercise of its authority under Articles 63(2) of the American Convention on Human Rights and 27 of its Rules of Procedure,

**DECIDES:**

1. To rescind the provisional measures in favor of Mrs. Solange Pierre's children, in accordance with the twenty-third to twenty-sixth considering paragraphs of this Order.
2. To rescind the provisional measures in favor of Messrs. Antonio Sension, William Medina Ferreras, and Berson Gelin, in accordance with the terms of the thirty-sixth to forty-first considering paragraphs of this Order.
3. To order that the Secretariat notify this Order to the Dominican Republic, the representatives of the beneficiaries of these measures, and to the Inter-American Commission on Human Rights.
4. To close this case file.

Diego García-Sayán  
President

Manuel E. Ventura Robles

Leonardo Franco

Margarette May Macaulay

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García Sayán  
President

Pablo Saavedra Alessandri  
Secretary