

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 12, 2000**

**PROVISIONAL MEASURES REQUESTED BY
THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS
IN THE MATTER OF THE DOMINICAN REPUBLIC**

**CASE OF HAITIANS AND HAITIAN-ORIGIN DOMINICANS
IN THE DOMINICAN REPUBLIC**

HAVING SEEN:

1. The Decision of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of August 18, 2000, wherein it decided to

1. [r]equire the State of the Dominican Republic to adopt, forthwith, the necessary measures to protect the life and personal integrity of Benito Tide Méndez, Antonio Sension, Andrea Alezy, Janty Fils-Aime, and William Medina Ferreras[;]
2. [r]equire the Inter-American Commission on Human Rights to urgently submit a detailed report to the Inter-American Court of Human Rights, by no later than August 31, 2000, on the current situation of Rafaelito Pérez Charles and Berson Gelim with regard to the diverging statements of the parties on these two persons[;]
3. [r]equire the State of the Dominican Republic to refrain from deporting or expelling Benito Tide Méndez and Antonio Sension from its territory[;]
4. [r]equire the State of the Dominican Republic to allow the immediate return of Janty Fils-Aime and William Medina Ferreras to its territory[;]
5. [r]equire the State of the Dominican Republic to allow, as soon as possible, the family reunification of Antonio Sension and Andrea Alezy with their under-age children in the Dominican Republic[;]
6. [r]equire the State of the Dominican Republic to cooperate with Antonio Sension in getting information on the whereabouts of his relatives in Haiti or in the Dominican Republic[;]
7. [r]equire the State of the Dominican Republic, in connection with relevant cooperation agreements between the Dominican Republic and Haiti, to investigate the situation of Janty Fils-Aime and William Medina Ferreras under the supervision of the Inter-American Commission on Human Rights, to expedite the outcome of said investigations[;]
8. [r]equire the State of the Dominican Republic to continue a follow-up on the investigations already started by its competent authorities with regard to Benito Tide Méndez, Rafaelito Pérez Charles, Antonio Sension, Andrea Alezy, and Berson Gelim[;]
9. [r]equire the State of the Dominican Republic to adopt, forthwith, the necessary measures to protect the life and personal integrity of Father Pedro Ruquoy and Ms. Solange Pierre, witnesses in the public hearing of August 8, 2000[;]
10. [r]equire the State of the Dominican Republic and the Inter-American Commission on Human Rights to provide the Inter-American Court of Human Rights with

detailed information on the situation of border community or "batey" members who may be subject to forced repatriations, deportations, or expulsions[;]

11. [r]equire the State of the Dominican Republic to report to the Inter-American Court of Human Rights, every two months after being given notice of this decision, on the provisional measures it has adopted in compliance with it[;]

12. [r]equire the Inter-American Commission on Human Rights to submit its remarks to the reports of the State of the Dominican Republic within a period of six weeks after being received.

2. The brief of the Inter-American Commission of Human Rights (hereinafter "the Inter-American Commission" or "the Commission") of August 31, 2000 where it informed the Court about the current information of Rafaelito Pérez Charles and Berson Gelim, as follows:

a) Rafaelito Pérez Charles

The Commission assured he was born and raised in the Batey seven Community, Neyba, Dominican Republic; he has been forcefully deported once without being given the chance to prove his Dominican nationality; and he is currently not living in the Batey seven Community because he is under the fear of being deported again, as well as fear for his life because of his complaint to the Commission. It said the assumed Government officials who visited the above-mentioned Community were told Rafaelito Pérez Charles was born, was raised, and was living until very recently in the Batey seven and that the Government based its allegation regarding Rafaelito Pérez Charles on the alleged statement by Adolfo Encarnación, who has denied what has been affirmed by the State. It attached copies of depositions by Rafaelito Pérez Charles' mother, Ms. María Esthel Medina Matos, the First Puisne Mayor of the Batey seven Community, Mr. Eristen González González, and the Second Puisne Mayors of the Batey seven Community, Messrs. Adolfo Encarnación and Saint Foir José Louis.

b) Berson Gelim

The Commission repeated that Dominican authorities do not keep an adequate control on the "arbitrary deportations and expulsions" they carry out, and for this reason Berson Gelim, among many other "victims of this policy", does not appear as registered in the official immigration minutes. It attached two depositions signed personally by him, the last one taken on June 26, 2000, with the purpose of updating the petition for provisional measures "proving that Berson Gelim was arbitrarily expelled from the Dominican Republic".

Finally, the Commission requested the Court to "urgently adopt the following provisional measures":

a. [t]o order the State of the Dominican Republic to refrain from deporting or expelling Rafaelito Pérez Charles from its territory;

b. [t]o order the State of the Dominican Republic to allow the immediate return of Berson Gelim to its territory and to let him meet with his son, whom he has not seen since he was expelled;

c. [t]o request from the State of the Dominican Republic the adoption of the necessary measures to protect the life and personal integrity of Rafaelito Pérez Charles and Berson Gelim; [and]

d. To request the State of the Dominican Republic to adopt the necessary measures so that Rafaelito Pérez Charles, Berson Gelim, and the other individualized

victims may file their complaints and make their statements, both nationally and internationally, without pressures or retaliations.

3. The decision of the President of the Court of September 14, 2000, whose considering section pointed out:

1. That the Dominican Republic is a State Party to the American Convention since April 19, 1978, and acknowledged the Court's jurisdiction, pursuant to Article 62 of the Convention, on March 25, 1999.

2. That Article 63(2) of the Convention provides that

[i]n cases of extreme seriousness and urgency, and when irreparable damage to people need to be prevented, the Court, in the matters it is hearing, will be able to take the provisional measures it deems relevant. If the matters are not yet under its jurisdiction, it will be able to take action upon the Commission's request.

3. That, under Articles 25(1) and 25(4) of the Rules of Procedure of the Court,

[a]t any stage of the proceeding, provided they are cases of extreme seriousness and urgency and when irreparable damage to people need to be prevented, the Court, by the powers invested in it or at the request of one of the parties, shall be able to order the provisional measures it deems relevant, under Article 63(2) of the Convention.

[...]

[i]f the Court is not in session, the president, in consultation with the permanent commission and, if possible, with the other judges, will require the respective government to issue the necessary urgent orders to insure the effectiveness of the provisional measures the Court might then take in its next session.

4. That the information submitted by the Commission in its petition and its reports about the current situation of Rafaelito Pérez Charles and Berson Gelim demonstrate prima facie an extremely serious and urgent situation regarding the rights to life, personal integrity, circulation, and residence of said persons, as well as the right to special protection of children in the family, in the case of Berson Gelim.¹ The standard of prima facie appreciation of a case and the application of presumptions in face of the needs for protection have prompted this Court to order provisional measures at different times.²

5. That Article 1(1) of the Convention provides for the duty of States Party to respect the rights and freedoms recognized in this treaty and to guarantee their free and full exercise to all persons subject to its jurisdiction.

6. That it is the responsibility of the Dominican Republic to adopt safety measures in protecting all persons subject to its jurisdiction; this duty becomes even more evident in connection to those people who are bound by processes before the supervision organs of the American Convention.

¹ Cf. Articles 4, 5, 22, 17 and 19 of the American Convention on Human Rights, respectively.

² Cf. *inter alia*, *Constitutional Court Case*, Provisional Measures, Decision of April 7, 2000; *Digna Ochoa and Plácido et al. Case*, Provisional Measures, Decision of November 17, 1999. Series E No. 2; *Cesti Hurtado Case*, Provisional Measures, Decision of June 3, 1999. Series E No. 2; *James et al. Case*, Provisional Measures, Decision of May 27, 1999. Series E No. 2; *Clemente Teherán et al. Case*, Provisional Measures, Decision of June 19, 1998. Series E No. 2; *Alvarez et al. Case*, Provisional Measures, Decision of July 22, 1997. Series E No. 2; *Blake Case*, Provisional Measures, Decision of August 16, 1995. Series E No. 1; *Carpio Nicolle Case*, Provisional Measures, Decision of July 26, 1995. Series E No. 1; *Carpio Nicolle Case*, Provisional Measures, Decision of June 4, 1995. Series E No. 1; *Caballero Delgado and Santana Case*, Provisional Measures, Decision of December 7, 1994. Series E No. 1; and *Colotenango Case*, Provisional Measures, Decision of June 22, 1994. Series E No. 1.

7. That the case covered in the petition of the Commission is not being heard by the Court as to the merits and, therefore, the adoption of urgent measures does not involve a decision on the merits of the existing controversy between the petitioners and the State. In adopting urgent measures, this Presidency is only guaranteeing that the Court is able to faithfully exercise its conventional mandate³ [;]

and in whose resolution section it decided

1. To require the State of the Dominican Republic to adopt, forthwith, the necessary measures to protect the life and personal integrity of Rafaelito Pérez Charles and Berson Gelim, so that the provisional measures the Inter-American Court of Human Rights decides to order, when appropriate, may take relevant effects.

2. To require the State of the Dominican Republic to refrain from deporting or expelling Rafaelito Pérez Charles from its territory.

3. To require the State of the Dominican Republic to allow the immediate return of Berson Gelim to its territory, even making it possible for him to meet with his son.

4. To require the State of the Dominican Republic, in its first report on the provisional measures ordered by the Inter-American Court of Human Rights on August 18, 2000, to also report on the urgent measures it has adopted in compliance with this Decision, to inform the Court in its next session.

5. To require the Inter-American Commission on Human Rights to submit remarks to the report of the State of the Dominican Republic within a period of six weeks after being received.

4. The first report of the Dominican Republic (hereinafter "the State"), wherein it indicated that:

a) during the visit to Batey 7, Neyba, the Clerk of the Department of Haitian Affairs of the General Migration Office, was informed that no person was known there with the name of Rafaelito Pérez Charles;

b) the General Migration Office, has not been able to communicate with Berson Gelim, who is in Haiti, in order to verify his statements;

c) in case Rafaelito Pérez Charles and Berson Gelim "be located" and it is verifie[d] that they are certainly Haitian nationals and their *status* in the Dominican Republic is illegal, it corresponds to a [S]tate's policy and the sovereign rights of the people to expulse from its territory any foreigners that are illegally there";

d) with regards to all of the other people protected by the provisional measures, no other deportations have occurred;

e) no claim has been received from Father Pedro Ruquoy and Ms. Solange Pierre, but both their lives and personal integrity are protected; and

³ Cf. *James et al. Case*, Provisional Measures, Decision of June 19, 1999. Series E No. 2; *James et al. Case*, Provisional Measures, Decision of May 11, 1999. Series E No. 2; *James et al. Case*, Provisional Measures, Decision of July 22, 1998. Series E No. 2; *James et al. Case*, Provisional Measures, Decision of July 13, 1998. Series E No. 2; *James et al. Case*, Provisional Measures, Decision of June 29, 1998. Series E No. 2; and *James et al. Case*, Provisional Measures, Decision of May 27, 1998. Series E No. 2..

f) there are bateys in Barahona only, on the Dominican-Haitian border, where 70% of the community is Dominican and the remaining 30% comes during the sugar cane harvest and they are contracted.

CONSIDERING:

1. The Dominican Republic is a State Party to the American Convention (hereinafter "the American Convention" or "the Convention") since April 19, 1978, and acknowledged the Court's jurisdiction, pursuant to Article 62 of the Convention, on March 25, 1999.

2. Article 63(2) of the American Convention provides that, in cases of extreme seriousness and urgency, and when irreparable damage to people needs to be prevented, the Court, in the matters it is hearing, will be able to take the provisional measures it deems relevant.

3. Under the terms of 25(1) of the Rules of Procedure of the Court:

[a]t any stage of the proceeding, provided they are cases of extreme seriousness and urgency and when irreparable damage to people need to be prevented, the Court, by the powers invested in it or at the request of one of the parties, shall be able to order the provisional measures it deems relevant, under Article 63(2) of the Convention.

4. Article 1(1) of the Convention provides for the duty of States Party to respect the rights and freedoms recognized in this treaty and to guarantee their free and full exercise to all persons subject to its jurisdiction.

5. The information submitted by the Commission in its petition (*supra* Having seen 2) and its reports about the current situation of Rafaelito Pérez Charles and Berson Gelim demonstrate *prima facie* an extremely serious and urgent situation regarding the rights to life, personal integrity, circulation, and residence of said persons, as well as the right to special protection of children in the family, in the case of Berson Gelim.

6. The Court has established that it is the State's responsibility "to adopt security measures to protect all of the people that are under its jurisdiction; this duty becomes more evident with regards to those who are linked to processes before the supervision organs of the American Convention"⁴

7. It is the duty of the Dominican Republic to continue the follow-up of the investigation that has already been initiated by the competent authorities to contact and protect Rafaelito Pérez Charles and Berson Gelim.

8. The Decision of the President of the Court of September 14, 2000 was adjusted to the merits of the facts and circumstances and adopted according to the laws, all of which justified the adoption of some urgent measures, and it is ratified by this Court in all its terms.

⁴ cf. *inter alia*, Decision of the President of the Inter-American Court of Human Rights of October 28, 1996. Provisional Measures in the *Giraldo Cardona Case*, seventh whereas clause; Decision of the President of the Inter-American Court of Human Rights of March 23, 1998, in the *Clemente Teherán et al. Case*, seventh whereas clause; Decision of the Inter-American Court of Human Rights of November 17, 1999, Provisional Measures of the *Digna Ochoa y Plácido et al. Case*, seventh whereas clause, and Decision of the President of the Inter-American Court of Human Rights of April 7, 2000, Urgent Measures in the *Constitutional Court Case*, ninth considering clause and *supra* considering clause 9.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

based on Article 63(2) of the American Convention on Human Rights and in use of the attributions conferred upon it by Article 25 of its Rules of Procedure,

DECIDES:

1. To ratify the Decision of the President of the Inter-American Court of Human Rights of September 14, 2000 and, therefore, to require the State of the Dominican Republic to adopt, forthwith, the necessary measures to protect the life and personal integrity of Rafaelito Pérez Charles and Berson Gelim.
2. To require the State of the Dominican Republic to refrain from deporting or expelling Rafaelito Pérez Charles from its territory.
3. To require the State of the Dominican Republic to allow the immediate return of Berson Gelim to its territory, even making it possible for him to meet with his son.
4. To require the State of the Dominican Republic to continue the follow up of the investigations that were already initiated by the competent authorities with respect to Rafaelito Pérez Charles and Berson Gelim.
5. To require the State of the Dominican Republic, in its reports on the provisional measures ordered by the Inter-American Court of Human Rights on August 18, 2000, to also report on the urgent measures it has adopted in compliance with this Decision,
6. To require the Inter-American Commission on Human Rights to submit remarks to the report of the State of the Dominican Republic within a period of six weeks after being received.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez

Hernán Salgado-Pesantes

Oliver Jackman

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary