

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF SEPTEMBER 14, 2000**

**PROVISIONAL MEASURES
REGARDING THE DOMINICAN REPUBLIC**

**CASE OF HAITIANS AND HAITIAN-ORIGIN DOMINICANS
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 its Attachments, wherein it submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), in keeping with Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 25 of the Rules of Procedure of the Court, a petition for provisional measures on behalf of Haitian and Haitian-origin Dominican persons who are under the jurisdiction of the Dominican Republic (hereinafter "the State" or "the Dominican Republic") and who are at risk of being collectively "expelled" or "deported (hereinafter "the alleged victims"), concerning case No. 12.271, currently in process before the Commission.

2. That, in said brief, the Commission stated as facts those summarized below:

a) on November 12, 1999, the Commission received a complaint about "mass expulsions" of the alleged victims carried out by the State during that month. Ten days later, on November 22, 1999, the Commission issued a precautionary measure and requested the Dominican Republic to cease the "mass expulsions" and that, in case these continued, they should be done according to the requirements of due process;

b) on December 7, 1999, the State rejected the precautionary measure, indicated the legal procedures applicable to the "repatriations" implemented by the General Migration Office, and reported on the preparation of a new draft of the Migration Act and on conversations held with the Government of Haiti. Lastly, it stated that no "collective repatriations" were taking place in the Dominican Republic;

c) the pace of "deportations" decreased after November, 1999; however, on March 10 and May 5, 2000, petitioners renewed their complaint before the Commission, saying there was an average of 2,000 "deportations" per month since November, 1999, and that in April, 2000, there had been an increase in the pace of these "deportations";

d) "expulsions" are made through collective raids, without any legal procedure to adequately identify the nationality of "expelled" people, nor their migratory status nor their family ties; they are simply separated from their homes, without warning, without letting them take their belongings. Migration authorities select people to be deported on the basis of the color of their skin;

e) petitioners estimate that over 20,000 individuals were "expelled or deported" during November 1999. Dominican authorities use excessive force to make sure the alleged victims obey their orders, including sexual abuse of women; children suffer psychological damage, fear prevents them from leaving their homes, women of "deported" men have to survive without anything;

f) on December 3, 1999, the Governments of Haiti and the Dominican Republic signed an agreement by which the latter bound itself to notify Haitian authorities about any act of deportation of a Haitian national, an agreement that, according to petitioners, has not been complied with by the State; and

g) the practice of "deportations" and "expulsions" affects two groups: both legal and illegal Haitian and Haitian-origin Dominican workers residing in the Dominican territory;

and, based on the above, it petitioned the Court to

[...] adopt the provisional measures for the State to...suspend mass expulsions-deportations imposed on Haitians and Haitian-origin Dominicans by Dominican authorities, because they risk the life and physical integrity of deported people, as well as their separated relatives, particularly children under age who are left abandoned [;]

[...] adopt the provisional measures for the State to establish procedures for the discernment of cases where deportation is not appropriate from those where it is fit. In the case it is proper to expel or deport people who are in Dominican territory, requirements of the due process should be fully met, including minimum period of notice, access to family members, adequate hearings, and decisions legally adopted by competent authorities. In any case, deportations shall be done individually, not en masse.

3. The brief of the Commission of June 13, 2000, wherein it submitted an *Addendum* to its petition for provisional measures (*supra* 1) and reported that it had learned about the identity of some of the alleged victims, who had consented to be named in the context of the petition. Thus, the Commission described some of the specific circumstances of Messrs. Benito Tide Mendez, Rafaelito Perez Charles, Antonio Sension, Janty Fils-Aime, Berson Gelim, William Medina Ferreras¹ and Ms. Andrea Alezy, as well as those of some of their relatives, and petitioned the Court for the adoption of the necessary measures to

[a]llow the immediate return of the above-mentioned individuals who are currently in Haiti²;

¹ His real name is Wilner Yan, according to the State brief of August 8, 2000, accompanied by the Attachment of July 19, 2000, of the Director General of Migration of the Dominican Republic, submitted at the conclusion of a public hearing held before the Inter-American Court on August 8, 2000.

² According to the Commission's brief, Ms. Andrea Alezy and Messrs. Janty Fils-Aime, Berson Gelim, and William Medina Ferreras were "expelled" or "deported" from the Dominican Republic and are currently in Haiti.

[p]rotect the above-mentioned individuals and who are in [the] Dominican Republic against any action of detention or deportation prompted by their racial or national origin or by a suspicion of their not being citizens³;

[a]llow all the mentioned individuals [*supra*] to establish contact with their families, particularly their children under age, in order to normalize their upkeep, health, and school situation as soon as possible[;]

[...] urge the Dominican Government to establish adequate procedures for detaining and determining actions to deport deportable aliens, including the holding of hearings to demonstrate the right that people may have to remain in Dominican territory or, in the absence thereof, to get in touch with their families and employers in order to normalize the collection of wages and the protection of their property and personal belongings.

4. The Decision of the President of the Court on June 16, 2000, by which he summoned the State and the Commission to a public hearing that would be held at the seat of the Inter-American Court on August 8, 2000, starting at 10:00 A.M., with the purpose of having the Court listen to his points of view on the facts and circumstances leading to the petition for provisional measures.

5. The brief of the Commission of July 21, 2000, wherein it accredited the persons who would represent it in the public hearing (*supra* 4), proposed Ms. Solange Pierre and the R.F. Pedro Ruquoy as "experts" to present reports at said hearing, and asked the consent of the Court to show in said hearing a video with testimonies of the alleged victims.

6. The brief of the Inter-American Commission of July 25, 2000, presenting its position regarding its offer of "experts" and pointing out to the Court the need for having both.

7. The communication of the State of August 1, 2000, by which it accredited the persons who would represent it in the public hearing and took exception to the offer of the Commission of "experts".

8. The brief of the Inter-American Commission of August 4, 2000, wherein it replied to the exception taken by the State and reaffirmed the need for having two "experts" offered by the Commission for the public hearing.

9. The Decision of the Court of August 7, 2000, where it observed

1. [t]hat the Commission has informed this Court that Father Pedro Ruquoy and Ms. Solange Pie[rre] would make statements with regard to the situation of the alleged

³ According to the Commission's brief, Messrs. Rafaelito Pérez Charles and Antonio Sension are currently in the Dominican Republic at a constant risk of being "deported" or "expelled". Mr. Benito Tide Méndez "has returned or is about to return" to the Dominican Republic, after being "expelled" in late 1999. However, during the public hearing of August 8, 2000, the Commission confirmed that Mr. Benito Tide Méndez is in the Dominican Republic.

victims and the alleged practice of "expulsions" and its consequences, in order to illustrate the context within which this petition has been filed[;]

2. [t]hat the object of Father Pedro Ruquoy's and Ms. Solange Pie[rre]'s statements has no bearing on technical or specialized issues, concerning which this Court would require expert testimony[;]

3. [t]hat Article 44(1) of the Rules of Procedure of the Court provides, however, that the Court shall be able to "[s]ecure ex officio any evidence it deems useful. In particular, it shall be able to hear as witness, expert, or other title, any person whose testimony, statement, or opinion it deems relevant"[;]

4. [t]hat according to allegations by the State and the Commission, both Father Pedro Ruquoy and Ms. Solange Pie[rre] have worked with the alleged victims and directly perceived their living circumstances and conditions, by reason of which this Court orders the appearance of both to hear their statements as witnesses[;and]

5. [t]hat the fact a person has a direct interest in the process outcome o has been involved as petitioner in the proceedings before the Commission is not ground for preventing this person from making statements before this Court, which in its practice has even admitted testimonies of victims and their relatives (*IACHR, Loayza Tamayo Case, Judgment of September 17, 1997. Series C No. 33; IACHR, Castillo Páez Case. Judgment of November 3, 1997. Series C No. 34; IACHR, Suárez Rosero Case. Judgment of November 12, 1997. Series C No. 35; IACHR, Blake Case. Judgment of January 24, 1998. Series C No. 36; IACHR, Paniagua Morales et al. Case. Judgment of March 8, 1998. Series C No. 37; IACHR, Villagran Morales et al. Case. Judgment of November 19, 1999. Series C No. 63*)⁴[;]

and decided to

1. [s]ubpoena Father Pedro Ruquoy to appear, at 10:00 A.M. on August 8, 2000, before the Inter-American Court of Human Rights to make a testimonial statement on the alleged practice of "expulsions and deportations" of Haitian and Haitian-origin Dominican persons in [the] Dominican Republic[;]

2. [s]ubpoena Ms. Solange Pie[rre] to appear, at 10:00 A.M. on August the 8, 2000, before the Inter-American Court of Human Rights to make a testimonial statement on the alleged practice of "expulsions and deportations" of Haitian and Haitian-origin Dominican persons in [the] Dominican Republic[;]

3. [r]equest the State of [the] Dominican Republic to facilitate exit from and entry to its territory to Father Pedro Ruquoy and Ms. Solange Pie[rre], subpoenaed by the Inter-American Court of Human Rights to make testimonial statements concerning this petition for provisional measures[; and]

4. [e]stablish that this subpoena is governed by Article 45 of the Rules of Procedure of the Inter-American Court of Human Rights, according to which the party proposing evidence should defray the expenses entailed by it.

10. The public hearing on the current petition held at the Inter-American Court on August 8, 2000, attended by

for the Dominican Republic:

Servio Tulio Castaños, agent;
 Danilo Díaz, alternate agent;
 Flavio Darío Espinal, assistant;
 Rhadys Abreu de Polanco, assistant;

⁴ This Court has followed the same practice at the reparations stage (*IACHR, Loayza Tamayo Case. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42; IACHR, Suárez Rosero Case. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of January 20, 1999. Series C No. 44*).

Wenceslao Guerrero-Pou, assistant;
 Teresita Torres García, assistant;
 Claudia Blonda, assistant; and
 Oscar Iván Peña, assistant.

for the Inter-American Commission on Human Rights:

Juan Méndez, delegate;
 Bertha Santoscoy, attorney;
 Roxanna Altholz, advisor;
 Katie Fleet, advisor;
 Cathie Powell, advisor;
 Arturo Carrillo, advisor; and
 Luguely Cunillera, advisor.

Witnesses produced by the Inter-American Commission:

Father Pedro Ruquoy; and
 Solange Pierre

11. The allegations of the Commission presented in the above-mentioned public hearing, which are summarized below:

- a) the Commission acknowledges that each State's immigration policy is its own sovereign decision; however, said policy has limits. Thus, in agreement with the American Convention, this policy can not infringe the rights of nationals to leave and enter the country and to take residence anywhere in the country; this policy should recognize legal foreign nationals' right not to be deported, except by a decision based on the law, and should prohibit collective expulsion of foreign nationals, with or without legal status. Similarly, the immigration policy should ensure an individual decision for each case with due process guarantees; it should respect the right to life, to physical and psychical integrity, to family, and the children's right to enjoy special protection measures. Lastly, implementation of said policy cannot result in cruel, inhuman, and degrading treatments or in discriminations by reason of race, color, religion, or sex;
- b) the Commission issued precautionary measures on November 21, 1999, and so far there has been no change in Dominican authorities' practice of deporting and expelling Haitian and Haitian-origin Dominican persons. This arbitrary, summary, and unguaranteed practice continues to be aimed against individuals with "black" skin color. Just for being black they are suspected of being Haitians, and for being Haitians they are presumed to be illegal and are expelled. Said practice causes enormous damage to Haitian and Haitian-origin Dominican persons, who live under the constant fear of being deported or expelled;
- c) this petition is made on behalf of a particular group, albeit nameless, because State practice does not make it possible to differentiate among individual group members, because these people do not speak out individually by reason of the fear they live in, and because the inter-American system for human rights would not be able to process the individual complaints filed by each member;

d) neither the letter nor the spirit of Article 63(2) of the American Convention prevent or restrain the irreparable damage from being damage to life, to integrity, or to any other right. There is, then, a need for acknowledging that other rights recognized by the Convention should be the object of a protection similar to the one bestowed, so far, on life and humane treatment;

e) the witnesses that appeared at the public hearing before the Court have justified fears, and the State questioning in said hearing did not allay said fears; and

f) the Commission continues to be open to constructive dialogue with Dominican authorities, with a view to reaching permanent solutions.

12. State allegations presented in the same public hearing, which are summarized below:

a) The Dominican Republic has a deportation procedure guaranteeing due process and individualized treatment of deportation cases. The State has very seriously taken the repatriations of Haitian citizens illegally found in its territory, and for this reason it has made a sustained effort, in cooperation with the Haitian Government, to increasingly improve repatriation mechanisms with a spirit of protection of rights. Also, the State recognizes that any mechanism or procedure has always room for improvement;

b) migration authorities have publicly and repeatedly invited non-government organizations in the Dominican Republic to watch the different stages of the deportation process, but this call has not been answered by said organizations;

c) the Dominican Republic is forced to maintain a permanent return and expulsion policy, but it must be said that the number of repatriated people is not even remotely offset by the number of people entering the country illegally. If this petition were accepted, it would be like tying the hands of a State that has been striving for four years to make progress in human rights issues and in its migration problem;

d) Haiti's problem is a problem of the international community and, above all, of the richer countries; the Dominican Republic has large economic limitations, high poverty levels, and cannot by itself carry on its shoulders the economic, social, environmental, political, institutional, and safety reality lived by the Haitian people; and

e) the persons on behalf of which the provisional measures are petitioned need to be identified; however, the Dominican Republic is in the best disposition to examine any individual case where there is an alleged violation of rights, in order to correct any excess that may have happened and take action in the same context where it is making progress towards improving repatriation mechanisms.

13. The statements made by the witnesses during the above-mentioned public hearing, which are summarized below:

a) Testimony of Father Pedro Ruquoy, Catholic priest, member of a missionary religious community in the Dominican Republic.

He declared about the process of forced repatriations in the Dominican Republic. Said process takes place very rapidly. In most cases, people are taken to the border on buses, without being able to get in touch with their families, without previous notice, without being able to bring their belongings and appear before a competent authority to prove their status. The criterion used in selecting people to be expelled is their skin color and their way of speaking. Additionally, some of the expelled persons are Dominicans with their citizen's ID, although they are told these ID's are fake. The alleged victims live in constant fear; sometimes, repatriations are conducted at night and people are subject to abuse, including women. On one occasion, he reported these situations in writing to the President of the Dominican Republic, but he did not get any answer. He held that, since he lives in the border area, every day he is visited by an average of 12 expelled persons who want to return to their home. Finally, he affirmed he understands and supports the fact that every country has the right to repatriate people who are illegally in their territory, but he does not agree with the way the Dominican Republic is treating these people upon repatriation.

b) Testimony of Ms. Solange Pierre, social worker, Director of the Dominican-Haitian Women's Movement.

She declared about the process of forced repatriations in the Dominican Republic. Armed military violently enter the homes of people and take them directly to Haiti. Said expulsions separate families, create traumas and serious consequences in the general population, particularly women and children. Moreover, many of the expelled persons have been living 20-30 years in the Dominican Republic and have already lost their ties to Haiti; many do not speak the language, do not have Haitian customs, and when they arrive in Haiti they find themselves in a totally unknown place. There are cases of rape in the context of expulsions. She works with approximately seven communities or "bateys", small communities lacking power, water, and basic services. She said expulsions occur without warning. She stated there are legislators and Government people who have demanded, on the media, that she be arrested, investigated, and expelled, and also her children and family have been terrorized. Finally, she added that the expulsion practice continues to date.

14. The brief submitted by the Dominican Republic, at the conclusion of the public hearing before the Court, and its Attachments, through which it claimed that

- a) the Commission rushed in its petition for provisional measures because it did not wait for the State's answer nor used the means and mechanisms it had available to verify the petitioners' complaint;
- b) the deportation of foreign nationals staying illegally in Dominican territory is a "non-negotiable right of the Dominican State that can not be waived because it is one of the fundamental attributes of its sovereignty", recognized in its legal system, which does not violate any treaty or convention the State has signed or ratified;

- c) the Dominican Republic has a deportation procedure guaranteeing due process and individualized treatment of deportation cases. Said procedure consists of three stages, namely: detention and identification, investigation and screening, and lastly, verification and confirmation;
- d) before a person is deported, competent authorities establish his identity and legal status in the State, to distinguish people who are liable to be deported from those who are not. Persons to be deported are subject to a final check, before being handed over to Haitian authorities, with Haitian consul participation;
- e) the Dominican Republic has made a sustained effort in establishing Haitian repatriation mechanisms with due protection of rights, a commitment that has been evident in the last few years through a deepening of cooperative relations between the Dominican government and the Haitian government, in the signing of different cooperation agreements on this issue;
- f) it is not true that "the life and physical integrity of a large number of people" are endangered in the Dominican Republic;
- g) the number of repatriated people every month should be analyzed in the context of the mass immigration of Haitian citizens to the Dominican territory; even so, statistics of the General Migration Office indicate repatriations have never reached the 1,000-people figure in any month;
- h) the Dominican Republic has serious difficulties in absorbing an indefinite and constant number of refugees, by reason of its own limitations, given this is a problem in need of solution at the global level;
- i) the identity of people in danger of suffering irreparable damage should be revealed in order to adopt provisional measures; measures taken on behalf of nameless people would only handicap the Dominican State in exercising its own right of protecting its border and controlling the legal status of persons entering its territory or inhabiting it; and
- j) regarding two of the persons mentioned in the Commission's *Addendum* of June 13, 2000 (*supra* 3), Rafaelito Pérez Charles does not reside nor has resided in the last 51 years in the Community mentioned by the Commission⁵, and Berson Gelim does not appear as registered among the people deported from the Dominican Republic.

Lastly, the State noted the particular circumstances of the other persons named in said *Addendum* of the Commission, requested the Court to reject this petition, and expressed "its willingness to rectify and to bring the people responsible under the law in any case where there is proof of some excess being committed or a disregard of rights to the detriment of a foreign national".

15. The Commission's communication of August 11, 2000, wherein it

- a) challenged the brief submitted by the State at the conclusion of the public hearing (*supra* 14);

⁵ The Commission referred to the Neyba Community, Batey 7.

- b) indicated, replying to a question posed by the President of the Court in the public hearing, that its petition for provisional measures was a *class action (actio popularis)*; and
- c) requested provisional measures also for the two witnesses that made statements in said public hearing.
16. The Court's Decision 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.
17. The brief of Commission of August 31, 2000, where it informed the Court about the current situation 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.

18. The Secretariat of the Court's note of September 1, 2000, wherein, following instructions of the President, it requested the Dominican Republic to urgently send its remarks to the brief of the Commission of August 31, 2000, by no later than September 12 of the same year. The State did not submit comments to said brief within the prescribed period.

CONSIDERING:

1. 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. 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. Under Article 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. 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 Gelim⁶. 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.⁷

5. 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. 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.

7. 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

⁶ Cf. Articles 4, 5, 22, 17 and 19 of the American Convention on Human Rights, respectively.

⁷ 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.

and the State. In adopting urgent measures, this Presidency is only guaranteeing that the Court is able to faithfully exercise its conventional mandate.⁸

NOW, THEREFORE:

THE PRESIDENT OF 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 him by Article 25(4) of its Rules of Procedure, after consulting with all judges in the Court,

DECIDES:

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.

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary

So ordered,

⁸ 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.

Antônio A. Caçado Trindade
President

Manuel E. Ventura-Robles
Secretary