

ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MARCH 31, 2014
PROVISIONAL MEASURES REGARDING ECUADOR
MATTER REGARDING TWO GIRLS OF THE INDIGENOUS PEOPLE OF TAROMENANE
IN VOLUNTARY ISOLATION¹

HAVING SEEN:

1. The brief of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") of January 19, 2014, and its attachments, wherein it filed a request for provisional measures before the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court" or "the Tribunal") pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and 27 of the Court Rules of Procedure (hereinafter "Rules of Procedure"), in order for the Court to require the Republic of Ecuador (hereinafter "Ecuador" or "the State") to "protect the life, personal integrity, right to a family, and right to identity of two girls, approximately age 2 and 6, who belong to the Taromenane indigenous peoples, in voluntary isolation in the Ecuadorian Amazon." Moreover, the Commission requested "the creation of an immediate means of determining the special measures of protection that are necessary, culturally appropriate, and in the best interest of both girls, given the circumstances each girl is currently living." Lastly, it expressed that "said means must take into consideration the opinion of the girls and prioritize seeking a means of consultation with the Waorani villages, so as to provide solutions that do not increase the harm that could be incurred to the detriment of both girls."

2. The Commission informed the Court that since May 10, 2006, it ordered precautionary measures in favor of the Tagaeri and Taromenane indigenous peoples, who are in voluntary isolation in the Ecuadorian Amazon." These precautionary measures were ordered "based on information received about a massacre that occurred on April 26, 2006, wherein members of the Taromenane indigenous peoples were murdered." The main purpose of the precautionary measures was the adoption of "effective measures to protect the life and personal integrity of members of the Tagaeri and Taromenane people, particularly, [...] the measures necessary to protect the territory they inhabit, including the actions required to prohibit the entry of third parties to the territory." In the framework of the monitoring of compliance with these precautionary measures, the Commission received information regarding two Taromenane girls. The background provided by the Commission in regard to the request for provisional measures, namely:

- i) "[o]n April 9, 2013, the Commission received information about an alleged massacre on March 30, 2013, wherein dozens of beneficiaries were murdered, that is, members of the Taromenane indigenous peoples in voluntary isolation, including girls and boys";
- ii) in this regard, the Commission noted that it had been informed that "in the framework of the massacre, which supposedly took place on March 30, 2013, to the

¹ Per the request of the Inter-American Commission, the proposed beneficiaries shall be referred to as "older girl" and "younger girl."

detriment of the beneficiaries of the precautionary measures, by members of the Waorani indigenous peoples, the two girls, sisters, apparently members of the Taromenane peoples, were held within the Petroleum Block 16, under the control of the members of the Waorani indigenous peoples, and pursuant to the abovementioned, their parents and members of their community were murdered," and

iii) on November 26, 2013, members of the Police and Prosecutor's Office carried out an operation, wherein "hooded personnel went to the school of the older of the two Taromenane girls and removed her from the school premises using force." After this, the older girl was taken to a hospital and the younger girl remained in the Waorani community.

3. To date, the steps taken by the Commission in regard to the situation of the two girls, have been the following:

i) "on April 18, 2013, the Commission requested information from the State on the alleged massacre[, and] added a specific request about the situation of the two girls";

ii) "[o]n April 24, 2013, the State provided an answer to the request for information, reiterating information of a general nature on the measures adopted in the framework of the precautionary measures";

iii) "[o]n April 30, 2013, members of the Inter-American Commission held a meeting with the State of Ecuador";

iv) on "May 28, 2013, the petitioners filed more information" on the situation of the two girls;

v) "on August 21, 2013, the Commission once again requested information adding an express requirement about the girls";

vi) the Commission noted that "[o]n September 11, 2013, the State of Ecuador provided a communication wherein it ignored for the first time in this process the nature of the precautionary measures and expressly noted that it would not provide an answer";

vii) "[o]n October 25, 2013, the Commission reiterated the precautionary measures 91/06 that are in force and once again required the State to present the information requested on August 21, 2013, which included a request as to the situation of the girls," and

viii) the Commission reported that "the State of Ecuador has not provided an answer to this communication [...] and, as such, does not have information on the situation of the two girls, members of the Taromenane indigenous peoples in voluntary isolation."

4. The arguments of the Commission that formed the basis of the request for provisional measures are, *inter alia*, the following:

i) "as of that date until today, the older and younger girl remain separated from their family, from their peoples and without the possibility of being reunited. Both girls are in distinct circumstances, exposed to a situation of extreme gravity, urgency and risk of irreparable harm";

ii) "both girls were left exposed to multiple diseases and infections while under the control of an indigenous peoples that is not their own, with cultural, social, nutritional, and in general life patterns, that are distinct from those they have known all their lives";

iii) "both alleged beneficiaries face an extreme risk of irreparable harm to their rights to mental, moral, and cultural integrity, and to their right to identity and to a family,"

iv) "[b]oth girls face a situation of forced contact, and there is no knowledge of any State measures to carry out, with extraordinary care, a serious and culturally appropriate determination of the best interest of the alleged beneficiaries, not only in what entails their safety [...] but also in regard to their family, community, and cultural identity."

5. The note of the Secretariat of the Inter-American Court of January 20, 2014, wherein pursuant to the instructions of the President of the Inter-American Court, the State was required to, in a non-extendable period until January 24, 2014, present the observations it considers pertinent in regard to the request for provisional measures.

6. The brief of January 25, 2014, wherein the State provided its answer to the request made by the Inter-American Court and requested "the provisional measures be considered inadmissible in so far as they do not satisfy the requirements established in Article 63 of the American Convention."

7. The note of the Secretariat of the Inter-American Court of Human Rights of January 27, 2014, wherein, pursuant to the instructions of the plenary of the Inter-American Court, a request was made to the Inter-American Commission that in a non-extendable period of three working days it provide any observations it considers relevant about the brief presented by the State, specifically, in regard to the fulfillment of the requirements established in Article 63(2) of the American Convention on the admissibility of provisional measures in this matter.

8. The brief of January 31, 2014, wherein the Inter-American Commission provided its observations to the information provided by the State.

9. The note of the Secretariat of the Inter-American Court of February 6, 2014, wherein, pursuant to the instructions of the Plenary of the Inter-American Court, the State of Ecuador was required to, by no later than February 18, 2014, present the observations it considered relevant in regard to the information presented by the Inter-American Commission, as well as any additional information it considers relevant about the two girls. Moreover, the State was required to provide documentation to support the information that it has presented or may provide in the future.

10. The brief of February 18, 2014, wherein the State provided information required by the Court.

11. The note of the Secretariat of the Court of February 19, 2014, wherein, pursuant to instructions of the President of the Court, the Inter-American Commission was granted until February 27, 2014 to present its observations to the information provided by the State.

12. The brief of March 5, 2014, wherein the Inter-American Commission which was granted an extension until March 2, 2014, filed its observations to the information provided by the State.

CONSIDERING THAT:

1. Ecuador has been a State Party to the Convention since December 28, 1977, and acknowledged the contentious jurisdiction of the Court on July 24, 1984.

2. Article 63(2) of the American Convention provides 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. Pursuant to the terms of Article 27 of the Court's Rules of Procedure:²

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. The Court, or if the Court is not sitting, the Presidency, upon considering that it is possible and necessary, may require the State, the Commission, or the representatives of the beneficiaries to provide information on a request for provisional measures before deciding on the measure requested. [...]

8. When the Court considers it appropriate, it may require from other sources of information any relevant data on the matter that would permit it to assess the gravity and urgency of the situation and the effectiveness of the measures. To that end, it may also require expert opinions and any other report that it considers appropriate.

4. The following request for provisional measures does not stem from a case before the Court, nor has an initial application been filed before the Inter-American Commission regarding the same facts that form the basis of this request for provisional measures. Notwithstanding, this Court has established in previous cases that "in light of the precautionary nature of the measures, exceptionally, it is possible that the Court order the measures even when no contentious case exists before the Inter-American System, in situations that, *prima facie*, result in serious or urgent effects on human rights."³ In this regard, the Court has noted that in this type of situations, it must take into account, in addition to the requirements established in Article 63 of the Convention, the problem at hand, the effectiveness of the actions taken by the State in regard to the situation, and the degree of vulnerability faced by the persons whom the measures are for if the measures are not adopted. In this sense, the Court reiterates that in these cases, the Commission must present "sufficient justification that encompasses the abovementioned criteria and that the State not demonstrate in a clear or sufficient manner the effectiveness of the measures that were adopted in domestic jurisdiction."⁴

5. This Court has established that under the International Human Rights Law, the provisional measures are not only precautionary in the sense that they preserve a legal situation, but they are also mainly protective since they protect human rights, insofar as they avoid irreparable damage to people.⁵ The protective nature of the provisional measures is related to the framework of the International contentious realm. In this sense, the measures are aimed at preserving those rights that are in a state of possible risk until the controversy is resolved. Their purpose and objective is to assure the integrity and effectiveness of the decision on the merits, and in this way avoid harm to the rights under litigation, a situation that could render the *effet util* of the decision meaningless. As such, the provisional measures allow the State in question to comply with the final decision, and where necessary, proceed with the ordered reparations.⁶ In regard to the protective nature,

² Rules of Procedure approved by the Court in its LXXXV Period of Regular Sessions held on November 16 to 28, 2009.

³ Cf. *Matter of the Socio-Educational Internment Facility*, Provisional Measures regarding Brazil, order of the Court of February 25, 2001, Considering clause 6 and *Matter of Guerrero Larez* regarding Venezuela, order of the Court of November 17, 2009, Considering clause 8.

⁴ Cf. *Matter of the Socio-Educational Internment Facility*, Provisional Measures regarding Brazil, order of the Court of February 25, 2001, Considering clause 6 and *Matter of Guerrero Larez* regarding Venezuela. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering clause 8.

⁵ Cf. *Case of Newspaper "La Nación"*. Provisional Measures regarding Costa Rica. Order of the Court of September 7, 2001, Considering clause 4, and *Matter of Wong Ho Wing*. Provisional measures regarding Perú. Order of the President in exercise of the Court of December 6, 2012, Considering clause 5.

⁶ Cf. *Matter of El Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order

this Court has noted that, when the basic requirements are met, the provisional measures become a real jurisdictional guarantee of a preventive nature, as they protect human rights, in so much as they seek to avoid irreparable harm to persons.⁷

6. The three conditions required by Article 63(2) of the Convention for the Court to order the adoption of provisional measures must be present in all the situations in which the intervention of the Tribunal is requested.⁸ Given its jurisdiction, in the framework of the provisional measures, it falls upon the Court to only consider those arguments that are directly related to the extreme gravity, urgency, and necessity of avoiding irreparable harm to persons. Any other fact or argument can only be analyzed and resolved during consideration of the merits in a contentious case.⁹

7. As regards the requirement of "gravity," for purposes of the adoption of the provisional measures, the Convention requires that it be "extreme", that is, that it be at the highest or most intense level. The "urgent" nature implies that the risk or threat involved be imminent, which requires that the response be immediate. Finally, as regard to the damage, there must be a reasonable probability that it materialize, and it should not fall upon legal interests that are repairable.¹⁰

8. This Court confirms the following information provided by the Commission, which has not been contested by the State, regarding facts and background on this matter (*supra* Having Seen clause 2):

a) On March 30, 2013, a confrontation between the Waorani and Taromenane indigenous peoples took place, wherein all of the members of the clan to which the girls belonged died, including their parents.¹¹ Moreover, the Commission noted that the girls witnessed the murder of their mother.

b) The Commission expressed that said "massacre had been planned in advance and that spears and firearms were used by approximately 12 members of the Waorani indigenous peoples, allegedly revenge for the murder with spears of Ompore and Bugarney, an adult couple of the Waorani indigenous peoples, by members of the Taromenane indigenous peoples in voluntary isolation on March 5, 2013."

c) The day of the massacre, the two girls were separated from their community and taken to the closest community where the massacre allegedly occurred.

of the Court of February 8, 2008, Considering clause 7, and *Case of Barrios Family*, Provisional Measures regarding Venezuela. Order of the Court of May 30, 2013, Considering clause 2.

⁷ Cf. *Case of the Newspaper "La Nación"*. Provisional Measures regarding Costa Rica. Order of the Court of September 7, 2001, Considering clause 4, and *Case of Wong Ho Wing*, Provisional Measures regarding the Republic of Peru. Order of the Court of January 29, 2014, Considering clause 8.

⁸ Cf. *Case of Carpio Nicolle et al.*, Provisional Measures regarding Guatemala, Order of the Inter-American Court of Human Rights of July 6, 2009, Considering clause 14, and *Case of Wong Ho Wing*, Provisional Measures regarding the Republic of Peru. Order of the Court of January 29, 2014, Considering clause 3.

⁹ Cf. *Matter of James et al.*. Provisional Measures regarding Trinidad and Tobago, Order of the Inter-American Court of Human Rights of August 29, 1998, Considering clause 6, and *Matter of Flores et al. in relation to the Case of Torres Millacura et al. v. Argentina*, Provisional Measures regarding the Republic of Argentina. Order of the Court of November 26, 2013, Considering clause 4.

¹⁰ Cf. *Matters of Monagas Judicial Confinement Center ("La Pica"), Yare I and Yare II Capital Region Penitentiary Centers, and Penitentiary Center of the Western Region (Uribina Prison), and El Rodeo I and el Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela, Order of the Inter-American Court of Human Rights of November 24, 2009, Considering clause 3, and *Matter of Flores et al in relation to the Case of Torres Millacura et al. v. Argentina*, Provisional Measures regarding the Republic of Argentina. Order of the Court of November 26, 2013, Considering clause 11.

¹¹ State brief of January 25, 2014 (case file on provisional measures, tome II folio 397).

d) The two girls remained in that community, and pursuant to the information that was presented before the Commission, the first few weeks were very difficult for them. In fact, a psychologist that visited the girls in the month of September 2013 reported that the older girl showed symptoms of "post-traumatic stress," such as "withholding of emotions, an emotionless expression, lack of responsiveness to her environment, anhedonia, apathy, avoidance, failure to seek refuge from her caregiver, fear of physical contact, repetitive hand movements, silence (does not respond to the questions made by her caregiver, does not speak to anyone), hypervigilance, vegetative hyperactivity (respiratory frequency 28/minute, cold skin, pilomotor reflex upon contact, muscular contraction)"¹².

e) On November 26, 2013, members of the Police and the Prosecutor's Office carried out an operation and entered the community where the two girls were staying. They entered the older girl's school and they took her in a helicopter to a nearby hospital in the area.

9. It is important to note that in general terms this was all the information the Inter-American Commission had at the time it presented the request for provisional measures, because despite having requested specific information regarding the girls from the State several times (*supra* Having Seen clause 3), the State did not provide this information. As such, the Commission stated before the Court that "given the State's lack of response to the Commission's requests, it did not have more details regarding the situation that the girls underwent under control of the Waorani peoples, and in the case of the younger girl, the state in which she lives in custody of the Waorani peoples." In this regard, the Commission expressed its concern that it did not have information on: i) "the current situation of the two girls, or an explanation of the effectiveness of the mechanism adopted by the State to address the specific situation" of the girls, and ii) "the situation of the older Taromenane girl who was removed from school in the operation of November 26, 2013, or of the younger Taromenane girl, approximately two years old, who is currently in custody of the Waorani peoples and separated from her sister."

10. After the request for provisional measures was made, the State reported the following to the Court:

A. Background and general state of the two girls:

i) The State created the "Commission for the Investigation on Existing Disputes between the Huarani and Taromenane Indigenous Peoples."¹³ This Commission has concluded:

a) "the impossibility that the two girls be returned to their family group," taking into account "the scale of temporal adaptation of ten months of separation from their family clan; that the "girls have been immunized and returning them to their group of origin may imply threat of death for all the members, because the girls may be carriers of multiple diseases, and that "the girls do not have the ability to orient themselves in the jungle where they were separated from their family."

b) "the Waorani peoples are the only ones who can guarantee that the cultural rights and identity of the girls are protected."

¹² State brief of January 25, 2014 (case file on provisional measures, tome II, folio 399).

¹³ Decree issued by President Rafael Correa on July 20, 2013 (case file on provisional measures, tome II, folio 419).

- c) “[i]t is desirable that the girls be reunited as soon as possible in one single community, the most appropriate being Bameno.”
- d) “[i]n order to reunite the two girls, it is recommended that a negotiation process be carried out with the Waorani who have custody of the [younger girl].”

ii) “[T]he girls were admitted into the *National System for the Protection and Assistance to Victims, Witnesses, and other Participants in Criminal Proceedings of the General Prosecutor’s Office of the State* [...], wherein coordination took place with the Waorani people in order to allow for entry into their territory and plan protection strategies to prevent adverse reactions to the [alleged] victims.” In the framework of this system, the State expressed that the following measures, *inter alia*, have been implemented and agreed upon:

- a) “[t]he Provincial Coordination of the System for the Protection of Victims and Witnesses of Orellana in close relationship with the prosecutor’s office in charge of the case, establishes all of the necessary measures to guarantee that the relationship between the Health System and the girls in a state of special protection is continually provided by way of Comprehensive Health Care Team (EAIS for its acronym in Spanish), who will also limit entry, visits, and exit of multiple persons.”
- b) “[t]he visits by the system will be carried out under specific health care and registry protocols in order to guarantee that the girls are not revictimized.”
- c) “[t]he Ministry of Health must inform the Prosecutor’s Office in charge of the investigation and coordination of provincial victims about the health of the girls in a permanent manner at least once every 15 days.”

iii) “The Ministry of Public Health ordered that its personnel go to the area where the girls are living, that is, the Waorani communities of Dikaro and Yarentaro, and will be in charge of permanently monitoring the physical and psychological state of the girls.” The State presented a report issued by the Ministry of Health, which stated that the following measures had been implemented:

- a) “in the framework of the PLAN FOR THE IMPLEMENTATION OF PRECAUTIONARY MEASURES IN FAVOR OF THE TAROMENANI AND TAGAERI PEOPLES, a multidisciplinary health care team was formed by: Doctor, Anthropologist, Nurse, Psychologist, Technician in Primary Health Care (of Waorani Nationality and Translators of Waorani Nationality), in order to successfully coordinate a visit to see the girls and establish their physical presence and proceed pursuant to established norms.”¹⁴
- b) “[a]pply the services to the reality lived by the population of the communities of Dicaro and Bameno, and as such of the girls [...]: for example, systematic accompaniment of psychological care and the wellbeing of the girls in order to monitor their adaptation process and inclusion in the community, as well as accompany if adverse effects take place due to the intervention, health care with an emphasis in promotion and prevention, care throughout life cycles with individual, family, community, and intercultural approaches, (use of family records), implementation of aspects of ethnomedicine.”¹⁵
- c) “[s]ince the arrival of the [older] girl to the Bameno community (November 29, 2013), there have been 5 visits by the Ministry of Public Health to the

¹⁴ Report on the health of the Taromenane girls of January 22, 2014 (case file on provisional measures, tome II, folio 489).

¹⁵ Report on the health of the Taromenane girls of January 22, 2014 (case file on provisional measures, tome II, folio 490).

community, some to monitor the health of the girl as well as the host community.”

iv) “The girls were immunized and have received health care pursuant to a medical protocol designed to provide care to peoples in initial contact attempts, pursuant to the recommendations of the United Nations in these types of cases.”

v) “[T]he General Prosecutor’s Office of the State noted that when planning the rescue of the [older girl] on November 26, 2013, the route that was used was coordinated with traditional Woarani leaders, supporting documents, consultations with specialists, and intelligence work that ratified the operation.”

vi) “[F]ollowing the facts of March 30, 2013, the minor girls were taken by their captors of Waorani nationality to different places; the older [girl] was taken to the Yarentaro community, and after the operation organized by the General Prosecutor’s Office of the State, is now in Bamenó. On the other hand, the younger [girl] remained for a few weeks in the care of a Waorani family (captors) in an undetermined location in the Amazon jungle, where she was then taken to the Dikaro community and given to another Waorani family, and she remains there to date.”

vii) “Currently the physical and psychological health of the two girls is in good condition, and they are both integrated in the community where they live and demonstrate a good level of socialization within their family environment.”

B. On the current state of the older girl¹⁶:

- Location: Bamenó community
- Host family: Bahigua Miipo
- Family makeup: large family with several children of her same age and with two persons who provide direct care to the older girl.
- Physical condition: the older girl is in good physical condition and does not demonstrate signs or symptoms of any illness. The diagnosis is, Healthy girl.
- Psychological condition: the girl is in a process of adapting to her new family and does not evidence signs or symptoms at this time of psychological harm. She demonstrates empathy with her host family. She participates in a proactive manner in kids games and activities in the community.
- The EAIS monitoring team: two doctors, a dentist, a licensed nurse, and health care promoter

C. On the current state of the younger girl¹⁷:

- Location: Dikaro community
- Host family: Omeway Oguinea
- Family makeup: large family with several children of her same age and with a woman that provides direct care to the younger girl.
- Physical condition: the younger girl is in a good physical condition and does not demonstrate signs or symptoms of any illness. Diagnostic is Health Girl.
- Psychological condition: the girl is in a process of adapting to her host family and does not demonstrate signs or symptoms at this time of psychological harm. She

¹⁶ Report on the health of the Taromenane girls of January 22, 2014 (case file on provisional measures, tome II, folio 491).

¹⁷ Report on the health of the Taromenane girls of January 22, 2014 (case file on provisional measures, tome II, folio 491)

demonstrates empathy with her host family. She participates in a proactive manner in kids games and activities in the community.

- The EAIS monitoring team: two doctors, a dentist, a licensed nurse, and health care promoter

11. Based on the information that was provided, the State argued that it has "safeguarded the life and personal integrity of the two girls as confirmed by the efforts carried out by the Ministry of Health, which in order to mitigate any risk to life, took the necessary measures to monitor and immunize the girls." It added that "from the documents that [were attached], it is evident that since the elements of 'extreme gravity' and urgency do not exist, the materialization of damage is less likely." Thus, the State concluded that "the request made by the [Commission] does not fulfill the requirements established by the American Convention [...] for provisional measures, and thus it is not necessary that [...] the Court hear this request."

12. Regarding the information and arguments presented by the State, the Commission stated that "the information was not made known to it despite the multiple requests made during 2013." It argued that the information provided by the State "even though it includes some information on the current state of the girls, it is not sufficient information to understand the details about how each of the risk factors has been addressed by the State." Moreover, the Commission stated that those requesting the measures informed that the prosecution was planning a police operation to rescue the younger girl. It added that the risk factors presented in the request for provisional measures are still present. Given the abovementioned, the Commission considered it necessary that "taking into account the complexity of the case, the age of the girls, and the state of vulnerability to which they are exposed, [...] the [...] Court require additional information from the State of Ecuador on these aspects."

13. As was noted (*supra* Having Seen clause 9), the Court required additional information from the State. On February 18, 2014, the State noted the following:

i) Regarding the possible police operation to take place where the young girl is located, according to a report dated February 17 "of this year," of the General Prosecutor's Office of the State, there was an attack perpetrated against members of a family in voluntary isolation that was organized and carried out by seventeen (17) persons who belong to the Waorani communities of Yarentaro and Dikaro.

ii) "Given that this is a matter of cultural and legal concern, the General Prosecutor's Office of the State added an anthropological report to the case file to establish grounds for the pretrial investigation and the preliminary investigation procedure. In these procedures, the Prosecutor's Office took into account the principles of intercultural justice."

iii) The return of the girls to a nanicabo (family group) in isolation where they once resided, "is currently inapplicable due to physical and epidemiological reasons that could severely threaten the life of the peoples in voluntary isolation, given that the minors have been periodically immunized, and that they have been in contact with the indigenous Waorani communities, as is evident from the information provided by the Ministry of Public Health."

iv) "The Prosecutor's Office noted that in consideration of the girls' best interest, there is no doubt about the state of wellbeing in which the [older girl] is currently living and about the convenience of reuniting the younger girl [who is currently in the

Waorani family nucleus of Dikaro] with her sister.” The traditional Dikaro chief “had promised to peacefully return the [younger] girl and that has not happened.” “Currently, the General Prosecutor’s Office of the State is exhausting all negotiation attempts with the Dikaro indigenous leaders in order to succeed with this objective.” “At the moment, no other police operation has been ordered where [the younger girl] resides.”

v) Regarding the alleged risk to the life and personal integrity of both girls due to the possible violence in the area, pursuant to the Report of the General Prosecutor’s Office of the State, “the state of **foster care** and peace in which the [older]girl lives in the village of Bameno was verified and optimal conditions exist that assure the life and personal integrity of the girl.” “The General Prosecutor’s Office of the State and Ome Gompote (Waorani Association of the Cononaco Yasuni) designed and implemented a Specific Protocol for the Protection of life, integrity, and other rights of the girls and the indigenous population of Bameno. The principle objective of this Protocol is to establish an idea as to custody and actions to be taken regarding possible incursions of other indigenous groups to this area.”

vi) Regarding the alleged risk to life and integrity derived from the risk to health given the state of voluntary isolation, the Ministry of Public Health has informed that the prior work that has been carried out from knowledge of the girls potential vulnerability “has generated a sense of trust in the families that are close to the girls, which has allowed for the application of vaccinations, assessment and permanent monitoring of their health.” In the older girl’s case “her integration increases more and more each day, and the linguistic difficulties are not so great that communication is affected.” The State attached various records and reports about visits to see the girls and actions adopted in relation to their health.”¹⁸

vii) Given the alleged irreparable harm to the girls’ mental, moral, and cultural integrity, identity, and family derived from the traumatic effects of the death of their parents and members of their village, the Ministry of Justice, Human Rights, and Religious Affairs reported that on February 17, 2014, the younger girl “was under the care of the Omeway Oguinea Waorani family, a family with several children of a similar age; the mother of these minors is Mrs. Obe Oguinea, 55 years old, who provides direct care” to the younger girl. In regard to the older girl, “she is cared for by a Waorani family named Bahigua Miippo where she is surrounded by other children

¹⁸ Report on actions taken by the Ministry of Public Health regarding the two presumably Taromenane girls taken from the Yarentaro community on April 26, (case file on provisional measures, tome II, folios 466 to 471); Report on the actions taken by the Ministry of Public Health to guarantee the health of the two presumably Taromenane girls taken from the Waorani community of Yarentaro and Dicaro of August 7, 2013 (case file on provisional measures, tome II, folios 472 to 480); Report on the health of the presumably Taromenane [older and younger] girls of January 22, 2014; Report of the medical visit to the Dicaro and Yarentaro communities of Waorani nationalities of April 4, 2013 (case file on provisional measures, tome II, folios 504 to 507); Report on the medical visit to the Yarentaro Waorani community on April 6, 2013 (case file on provisional measures, tome II, folios 508 and 509); Visit by the medical team of the Ministry of Public Health to the Yarentaro community of Waorani nationality on April 28 and 28, 2013 (case file on provisional measures, tome II, folios 512 to 514); Monitoring of the health of the two girls on May 8 and 11, 2013 (case file on provisional measures, tome II, folios 515 to 517); Monitoring of the health of the two girls, May 18 and 26, 2013 (case file on provisional measures, tome II, folios 518 to 520); Monitoring of the health of the two girls of June 3 and 15, 2013 (case file on provisional measures, tome II, folios 524 to 526); Monitoring of the health of the younger girl on July 11, 2013 (case file on provisional measures, tome II, folios 527 and 528); Monitoring of the health of the two girls, issued on July 22 and 23, June 15, August 21, September 9, 19 and 23, October 7 and 19, November 1, 13 and 17 2013 (case file on provisional measures, tome 2, folios 559 to 562); Monitoring of the health of the two girls, December 25 and 31, 2013, and January 12, 15, 20 to 26, 2014 (case file on provisional measures, tome II, folios 562 to 570).

and two Waorani women who are approximately 45 years old, and who directly care for" the older girl.

viii) Regarding the alleged traumatic effects generated by the original separation of the family, the report of August 7, 2013, of the Ministry of Public Health addresses "the episodes of conflict experienced by the girls as part of the social order, which includes notions of war and peace that correspond to cultural codes that differ from those in western culture."

ix) "Pursuant to the psychological report provided by the Ministry of Health, the method used by the specialist to psychologically approach the two girls [...] was observation and play since the psychological examinations do not apply to this cultural context." Pursuant to this report, "the family group where the two girls live is extensive (not nuclear) and they share space with other children who have blood relationship as children and grandchildren and where there are various generations sharing living space." Moreover, the "children of the Waorani communities, in the case of both the [older and younger girl] socialize and teach the Wao language to the girls and thus their communication improves each day." "The western cultural notion of trauma is not applicable to the cultural situation of the girls."

14. In relation to this information, on March 5, 2014, the Inter-American Commission reiterated that "this information was not provided to the Commission despite the multiple requests that were made" in 2013. It added that "taking into account the sequence of traumatic events lived by the girls and the isolation which they have lived most of their lives," "beyond the immunizations and checkups described," the State must provide "all the means at its reach to assure that the physical and psychological monitoring of the girls is continuous, comprehensive, and culturally appropriate." It noted that there was a "sort of agreement" between the State and the petitioners as to the "older girl staying in the care of the family and community where she currently lives." "Nevertheless, in regard to the younger girl, the situation described in the request for provisional measures has not varied substantially," given that "it is not clear" what "specific measures were adopted by the State to address the risk to which the younger girl is exposed in the family and community where she currently lives." In addition, it noted its "concern about the conflict in the area between members of the Waorani indigenous peoples," and "the indigenous peoples in voluntary isolation." "In this sense, the State's report mentions that on February 17, 2014, there was another "attack" by the members of the Waorani peoples, against those living in voluntary isolation, with no explanation." "In this sense, the presence of the younger girl – who comes from a village in voluntary isolation and who was taken as a sort of war prize – in a community of the Waorani peoples where it is not clear if there is a relationship or link with the communities in conflict, constitutes an indication that the risk to life and personal integrity persists."

15. As a first preliminary point, the Court recalls that the adoption of urgent or provisional measures does not imply a possible decision on the merits of a matter if the case were to eventually be heard by the Court, nor does it prejudice the State's responsibility for the facts.¹⁹

16. The Court notes that the information it has been provided to carry out the analysis of the request for provisional measures is substantially different from the information that the Inter-American Commission had when establishing the grounds for its request. Indeed, part

¹⁹ Cf. *Matter of James et al.*, Provisional Measures regarding Trinidad and Tobago. Order of the President of the Inter-American Court of Human Rights of July 13, 1998, Considering clause 6, and *Matter of L.M.*, Provisional measures regarding Paraguay, Order of the Court of July 1, 2001, Considering clause 22.

of the basis of the Commission's request stemmed from the need to take measures due to the uncertainty caused by not knowing the whereabouts of the older girl (*supra* Considering clause 9) or health and adaptation process of either of the two girls (*supra* Considering clause 9). This uncertainty was due to the State's unwillingness to present complete information on the two girls.

17. Taking into account the information presented by the State, the Court considers that the State has taken specific measures that have mitigated the situation of extreme gravity and urgency as well as the possibility of irreparable harm that was initially described by the Commission in its request. Specifically, the Court recalls that a fundamental aspect of the initial request was determining the whereabouts of the older girl and the general state of both girls, which has been established. Moreover, the Court considers that the relevant State institutions are aware of the complex situation the two girls are living and have adopted special measures such as the creation of a multidisciplinary health team in charge of monitoring the health of the girls (*supra* Considering clause 10), the development of a protocol for the immunization of the girls (*supra* Considering clause 10), the protocols and procedures created by the Ministry of Health and the General Prosecutor's Office to monitor the health and adaptation process of the girls, (*supra* Considering clause 10), among others.

18. Moreover, the Court takes into account the information provided by the State, wherein, despite the girls' difficult situation, generally they are both in good health and in a process of adapting to their foster families and communities (*supra* Considering clause 11). While it is alleged that the conflict in the area continues between the communities and that the girls are in a particularly complex situation regarding the process of adapting to their new surroundings, the Court considers that the State has been adopting special measures to monitor and protect their rights. As such, considering the monitoring procedures being implemented by some State institutions, the requirements established in Article 63(2) of the American Convention have not been met, and thus the adoption of provisional measures on this matter is not applicable. Notwithstanding, the Court considers that it is indispensable that the State continue to adopt the necessary measures to assure that, in the least amount of time possible, the younger girl is joined with the older girl.

19. Finally, the Tribunal recalls that the States have the constant and permanent duty of complying with the general obligations that correspond to it under Article 1(1) of the Convention, of respecting the rights and liberties recognized in it and guaranteeing the free and full exercise to each person subject to its jurisdiction.²⁰ As a consequence, independent of the existence of specific provisional measures, the State has the particular obligation of guaranteeing the rights of persons that are at risk, and it must effectuate the necessary investigations to clarify what took place, and where possible, punish those responsible.²¹ In this matter, the Court exhorts the Ecuadorian State to continue carrying out and monitoring the measures that have been implemented, and specifically, to reunite the two girls as soon as possible.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

²⁰ Cf. *Case of Velásquez Rodríguez*. Provisional Measures regarding Honduras. Order of the Court of January 15, 1988, Considering clause 3, and *Case of de La Cruz Flores V. Perú*, Considering clause 30.

²¹ Cf. *Case of Velásquez Rodríguez*, Provisional Measures regarding Honduras. Order of the Court of January 15, 1988, Considering clause 3, and *Matter of Guerrero Galluci*. Provisional measures regarding Venezuela. Order of the Court of November 21, 2011, Considering clause 28.

In use of its powers established in Article 63(2) of the American Convention and Article 27 of the Rules of Procedure,

DECIDES TO:

1. Dismiss the request for provisional measures filed by the Inter-American Commission on Human Rights in favor of the two Taromenane girls in voluntary isolation.
2. Archive the case file on the request for provisional measures of January 19, 2014, filed by the Inter-American Commission on Human Rights.
3. Order the Secretariat to provide legal notice of this Order to the State and the Inter-American Commission.

Humberto Antonio Sierra Porto
President

Roberto F. Caldas

Manuel E. Ventura Robles

Diego García Sayán

Alberto Pérez Pérez

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Humberto Antonio Sierra Porto
President

Pablo Saavedra Alessandri
Secretary