

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS<sup>1</sup>**

**OF MAY 30, 2013**

**REQUEST FOR PROVISIONAL MEASURES  
WITH REGARD TO THE REPUBLIC OF COLOMBIA**

**AVILA MORENO *ET AL.* (CASE OF OPERATION GENESIS)<sup>2</sup>**

**HAVING SEEN:**

1. The brief of February 26, 2013, of the *Comisión Intereclesial de Justicia y Paz*, the organization representing the proposed beneficiaries (hereinafter “the representatives”), together with its attachments, in which it submitted to the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) a request for provisional measures under Articles 63(2) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and 27 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), for the Court to require the Republic of Colombia (hereinafter “Colombia” or “the State”) to adopt provisional measures “in favor of [14] members of the group of presumed victims in the case of *Marino López et al. (Operation Genesis) v. Colombia*, which is currently being processed before the Court.”<sup>3</sup>

2. The background information presented by the representatives related to the request for provisional measures, indicating that:

a) The Urabá Chocoano, the region where the proposed beneficiaries are located, has historically been taken over as a mobility corridor by various illegal armed groups, such as the Revolutionary Armed Forces of Colombia (hereinafter “the FARC”) or paramilitary groups. Consequently, the situation of violence in the Urabá region has been characterized, among other

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<sup>1</sup> Judge Humberto Antonio Sierra Porto, a Colombian national, did not take part in the deliberation and decision on this request for provisional measures, pursuant to Articles 19(2) of the Court’s Statute and 19 of its Rules of Procedure. Judge Eduardo Vio Grossi advised the Court that, for reasons beyond his control, he would be unable to attend the deliberation and signature of this Order.

<sup>2</sup> As the title for processing this request for provisional measures, the Court is using the first name that appears on the alphabetical list of the proposed beneficiaries, who are presumed victims in the contentious case of *López et al. (Operation Genesis) v. Colombia*, which is under consideration by the Court at the time this Order is issued. With regard to the proposed beneficiary, Pascual Ávila Moreno, it is unclear whether he is presumed victim “Pascual Avila Carmona” (who appears in Report 64/11 of the Inter-American Commission) or “P.A. Carmona” (who appears in the brief with pleadings, motions and evidence of the representatives of the presumed victims). The Commission and the State did not make any observations in this regard.

<sup>3</sup> These are: 11 individuals who, according to the representatives and the Commission, play some kind of leading role in CAVIDA, and three women leaders who had been displaced to Turbo. The proposed beneficiaries are: Bernardo Vivas Mosquera, Sofía Roa, Marcos Fidel Velasquez, Rosalba Córdoba Rengifo, Elvia Hinestroza Roa, Etilvia Páez, Pascual Ávila Moreno, Edwin Orejuela, Jhon Jairo Mena, Sofía Quinto, Alicia Mosquera Hurtado, Josefina Mena and Emedelina Palacios. In a brief of February 26, 2013, the representatives indicated an error in the number of proposed beneficiaries, because there were 10 and not 17 as mentioned in the initial brief. Subsequently, in a brief of March 3, 2013, the representatives referred to a situation of risk for Angel Nellys Palacios.

factors, by the use of the banks of its rivers by illegal armed organizations to commit criminal acts, for arms or drug trafficking, or for other reasons such as logging native species, or growing coca, bananas and oil palms. As a result of this, mass forced displacement had taken place in the Urabá region and also in the region of Bajo Atrato;

b) In this context, and within the framework of a counterinsurgency operation known as "Operation Genesis" conducted by the Colombian Armed Forces from February 24 to 27, 1997, to halt the advance of the guerrilla groups, a paramilitary operation was mounted in the Cacarica River basin to terrorize the inhabitants of the villages in the area. At that time, Marino López Mena was executed by members of the "Elmer Cárdenas" paramilitary group;

c) These events resulted in the displacement of the inhabitants of the communities settled in the area of the Cacarica River, who were obliged to flee owing to the potential danger if they remained there. The proposed beneficiaries are members of the group of persons who were displaced to Turbo, department of Antioquia;<sup>4</sup>

d) On May 3, 2000, the *Comunidad de Autodeterminación, Vida y Dignidad* ("CAVIDA") [the Self-determination, Life and Dignity Community] was established, composed of various inhabitants of the Cacarica River basin, victims of forced displacement due to the events that occurred from February 24 to 27, 1997;<sup>5</sup>

e) The members of CAVIDA and the communities of the Cacarica displaced to Turbo continued to be targeted by threats, harassment and acts of violence, which jeopardized their life and safety;

f) Owing to the above, on December 17, 1997, the Inter-American Commission on Human Rights (hereinafter "the Commission") ordered preventive measures in favor of the persons who lived in the camps set up for the displaced in Turbo, and

g) More recently, following the public hearing in the case of *Marino López et al. v. Colombia* at the seat of the Inter-American Court on February 11 and 12, 2013, some of the proposed beneficiaries who appeared at the hearing were subjected to threats and harassment from different individuals on their return to Cacarica.

### 3. The proceeding on the request for, and adoption of, preventive measures before the Inter-American Commission:

a) On December 8, 1997, the Commission made an on-site visit to Colombia in order to observe the region's human rights situation;

b) On December 13, 1997, the *Comisión de Justicia y Paz* sent the Commission a report on the living conditions of the inhabitants of the camps for the displaced in Turbo;

c) In a note of the Commission's Executive Secretariat of December 17, 1997, the State was asked to adopt preventive measures in favor of the forcibly displaced persons who were living in Turbo,<sup>6</sup> because, during its on-site visit, the Commission had verified directly the acts of violence and harassment perpetrated by members of paramilitary groups against the members of the displaced communities;

d) The Commission indicated in its request corresponding to the issue of preventive measures No. 70/97, that:

"It was in order to grant preventive measures under Article 29(2) of [its] Rules of Procedure in order to avoid irreparable harm to the persons who live in the camps for the displaced in Turbo. Consequently, the Government is requested: (i) to adopt the necessary measures to investigate the events that occurred to the displaced who live in Turbo; (ii) to take the necessary steps to prevent the entry of armed persons who do not

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<sup>4</sup> According to the allegations, they were housed in the town's sports stadium, which the government had organized to receive victims of the armed conflict.

<sup>5</sup> The purpose of the community is to carry out "an organizational process that seeks to construct a community life project, with rules for the protection of human life amid the armed conflict; for the protection of the environment, biological wealth and the ecosystems, and [...] to avoid loss of identity owing to the displacement."

<sup>6</sup> The beneficiaries were the persons belonging to the camps for the displaced in Turbo, the displaced in the municipal sports stadium, and in the shelters that were built for them; the displaced in Bocas de Atrato; the Afro-descendant communities attached to CAVIDA and resettled in two humanitarian zones in the Cacarica River basin.

form part of the displaced persons in the camp, and (iii) to ensure that State agents and private individuals respect the camps for the displaced as humanitarian sites that enjoy special protection.”

e) On July 8, 1998, the State presented its response, in which it provided information on the aspects referred to by the Commission, and indicated: (i) regarding the insecurity in the shelters for the displaced and in the stadium, these sites were “being guarded by the Police and, from the time the preventive measures were ordered to date, no threats have occurred against those who are provisionally settled in the said places,” and (ii) regarding the information presented by the Presidential Adviser for the Displaced, “the national Government has been establishing a climate of cordiality with the representatives of the different communities located there related to the return to their places of origin”;

f) On April 24, 2000, the *Comisión Intereclesial de Justicia y Paz* forwarded information to the Inter-American Commission on supposed interrogations by paramilitaries to which the inhabitants of the Turbo stadium had been subjected when the first phase of their return to their places of origin started. In addition, they reported the presumed murder of a peasant named Otoniel Bautista Mantilla on March 22, 2000, accompanied by threats against the people;

g) During meetings held in Bogotá in April and November 2001, and October 2002, as well as at the public hearings held at its seat in May 2002, and working meetings that took place during its 113th, 116th, 118th, 119th and 123<sup>rd</sup> regular sessions in Washington D.C, the Commission received information on the persistence of the presumed situation of risk that gave rise to the award of the preventive measures, and

h) On February 8, 2003, the Inter-American Commission asked the State to take the greatest possible care to ensure that the security forces protected the life and integrity of the “*Nueva Vida*” and “*Esperanza de Dios*” communities and that the Subcommittee on Protection of the Cacarica Joint Verification Commission consider establishing the permanent presence of representatives of the State in the settlements in order to guarantee their security.

4. The alleged events on which the request for provisional measures presented by the representatives is based, namely:

a) On August 10, 2012, at a roadblock in Tumaradó, a village by the Atrato River, paramilitaries threatened to kill an Afro-descendant youth. They detained a boat that was carrying 20 people from Turbo to Cacarica. After examining the occupants, they accused the youth of being a member of the guerrilla and ordered him to get out of the boat. The other occupants of the boat persuaded the paramilitaries not to kill the young man and to let them depart;

b) On the same date, in one of the Orejuela family’s Biodiversity Zones, located 15 minutes from the *Nueva Esperanza en Dios* Humanitarian Zone, soldiers from the Army’s 17th Brigade damaged subsistence crops and stole more than 15 yucca plants;

c) At 9 a.m. on August 18, 2012, loud explosions were heard between the *Nueva Esperanza* Humanitarian Zone and the village of Bogotá, following which two helicopters flew over the area and these events sowed panic and anxiety among the communities;

d) On August 19, 2012, during meetings on the processes for restitution of land, redress for the victims, and on Afro-Colombians,<sup>7</sup> two of the women plaintiffs before the Court were threatened by a man who said: “*Justicia y Paz* has organized a meetings in the stadium, but this is going to end”;

e) On August 22, 2012, three men in uniform entered the *Nueva Esperanza en Dios* Humanitarian Zone, apparently from the 17th Brigade, hiding in a vegetable patch with their rifles at the ready;

f) On August 25, 2012, confrontations occurred between troops of the 17th Brigade and members of the guerrilla from the 57th Front of the FARC, in which Auralicia Quinto was injured by grenade fragments;

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<sup>7</sup> In particular, they indicated that one of those attending the meeting approached two of the women who are plaintiffs before the Inter-American Court and, in an intimidating tone, told them that they would not be allowed to hold further meetings in the stadium, saying “this is going to end.”

- g) During the morning of August 26, 2012, and 20 minutes from the *Nueva Esperanza en Dios* Humanitarian Zone, soldiers from the 17th Brigade were approached by members of CAVIDA who asked the soldiers to withdraw from that place, because of the risk of confrontations that could endanger their life and integrity. Lieutenant "R" told them that the soldiers were resting and asked if the human rights organizations were present in the Humanitarian Zone;
- h) On August 28, 2012, in the village of La Honda, in the Cacarica territory, on the banks of the Atrato River, five Afro-descendants were forced to stop. The paramilitaries intimidated and threatened them, after asking them why they were going to the town of Ríosucio;
- i) On August 29, 2012, a group of 15 paramilitaries entered the village of Travesía or Puente América, Cacarica collective territory, forcing the Afro-Colombians who were there to lie down on the ground; they then threatened to kill them and fired shots into the air to terrorize the community;
- j) On September 4, 2012, after passing through the village of Tumaradó, a group of paramilitaries in a high-powered motorboat detained one of the CAVIDA community's boats in which 20 people were travelling towards the territory. The representatives indicated that the paramilitaries stole more than 120 gallons of gasoline from the inhabitants of the Humanitarian Zone that had been destined for operating the community radio and television, the lighting of the Humanitarian Zones, the school and health centers. The paramilitaries, carrying weapons and communication radios, indicated that they were following the orders of the "Boss" who was in Turbo;
- k) The community leader Rosalba Córdoba informed *Justicia y Paz* that, on September 17, 2012, she had been threatened by the paramilitaries who controlled Tumaradó, and accused of denouncing the abuses committed since 1996 during and after Operation Genesis, as well as those committed frequently by the paramilitaries against civilians and goods that were travelling on the Atrato River annoying the so-called "Boss";
- l) On October 19, 2012, in the port known as "Waffe," in the municipality of Turbo, Edwin Mosquera, a member of the *Comisión de Justicia y Paz*, and of the team monitoring the Cacarica victims, was approached by three men, one of whom identified himself as a paramilitary;<sup>8</sup>
- m) On November 27, 2012, Josefina Mena, presumed victim in the above-mentioned proceedings, was approached by a paramilitary, who had been watching her for several minutes in an intimidating way while she was carrying out repair work on the monument to the victims erected in the Turbo stadium;<sup>9</sup>
- n) On December 22, 2012, the leader, Marcos Velásquez, was administered a substance that made him pass out. The following day, he was found in the sector known as "Las Yuquitas," which the local people say is controlled by the paramilitaries. The leader had been divested of documents that contained information on new acts of violence and matters related to the application presented to the Inter-American Court;
- o) The same day, men on motorcycles, members of the paramilitary group, were lurking around the home of Alicia Mosquera, widow of Herminio Mosquera, who was presumably tortured and murdered by paramilitaries in December 1997 (an incident that resulted in the adoption of preventive measures by the Commission). Owing to this surveillance and what presumably happened to Josefina Mena, she and the group of women refrained from going to the Turbo stadium;
- p) On December 24, 2012, a group of 15 military units belonging to the 54th Battalion, attached to the 17th Brigade, irrupted into the *Nueva Esperanza* Humanitarian Zone. According to

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<sup>8</sup> In particular, they advised that Edwin was accompanied by an international human rights observer awaiting one of the victims proposed as a deponent in the proceedings underway before the Inter-American Court in the case of Marino López *et al.* (Operation Genesis). One of the individuals who approached Edwin told him that he belonged to the paramilitary structures that, even today, are operating in the area, under the name of "*Gaitanistas*." In a threatening tone, the latter said: "I know what you are doing here now. I'm a 'para' from the United Self-Defense Forces of Colombia." Then, he took off his cap and asked: "Don't you recognize me?" When they did not answer, he added: "You may go on your way, but we are watching." Edwin and his companion withdrew rapidly.

<sup>9</sup> They indicated, in particular, that the paramilitary asked her: "Who is the leader?" and whether she was part of the "group who was working on the memorial." They also indicated that he asked questions concerning the names of the victims inscribed on the memorial, and whether Josefina had known them. In response, the leader Josefina said that the monument had been erected by those who had been living in the stadium as displaced people since 1997. The man then said that he knew some of the names that were recorded there and finally left the site.

the information provided to the Court, a member of the community became aware of the military presence and, in response, the soldiers pointed their rifles at him. One of the soldiers asked him whether the place was part of a Peace Community;<sup>10</sup>

q) On January 19, 2013, the youth, Arely Enrique Sierra Pérez, was retained by the 54th Forest Battalion, attached to the 17th Brigade, and accused of being a member of the guerrilla and providing information to the terrorists;<sup>11</sup>

r) On February 6, 2013, a boat travelling towards the Cacarica collective territory was detained by paramilitaries who asked the occupants about three members of the Humanitarian Zones and stated that they had a list of 16 people who were to be executed;

s) On February 13, 2013, on returning from Costa Rica, information was received that the panoramic glass of the automobile that was part of the protection plan and in which Father Alberto Franco Giraldo, Executive Secretary of the said organization, was travelling, had been struck by three bullets from a weapon with a silencer. These facts were preceded by the surveillance of, and various threats against, the team accompanying the victims in the case and Danilo Rueda, a member of the said organization;

t) On February 16, 2013, in the place known as Tumaradó, six paramilitaries held up the public services boat that covered the route Turbo – Ríosucio on the Atrato River. There were around 20 people in the boat, including the children Wendy Orejuela and Ricardo Quinto, and the adults Etilvia Páez, Sofía Roa, Sofía Quinto, Edwin Orejuela, Marco Velásquez and Pascual Ávila, members of the Cacarica community councils that belong to CAVIDA;<sup>12</sup>

u) On February 19, 2013, in the town of Turbo, the leader Elvia Hinestroza was questioned in an intimidating tone by an individual who stated that he had known where to find her and indicated that she was “with the *Justicia y Paz* guerrilla”;<sup>13</sup>

v) On February 21, 2013, while going by boat to the Cacarica collective territory, members of CAVIDA, accompanied by representatives of International Peace Brigades, the Ombudsman’s office, and two members of *Justicia y Paz*, were accosted by soldiers attached to the 16th River Battalion who ordered them to approach the river bank. The representatives indicated that there were three paramilitaries accompanying the law enforcement personnel;<sup>14</sup>

w) On February 24, 2013, the *Comisión de Justicia y Paz* was advised that the paramilitaries had detained a boat in which more than seven Embera indigenous people, including women, children

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<sup>10</sup> The representatives added that, during the threats, a member of CAVIDA had escaped from the place to advise the other members of the community. In reaction, the Afro-descendants organized a verification committee, which found that the soldiers had already broken camp and had damaged a community yucca crop.

<sup>11</sup> The representatives indicated that the young member of CAVIDA was hunting when he was detained and threatened with being shot if he made any noise. After being threatened for three hours, he was allowed to go, with the warning that if he reported what had happened, he would suffer the consequences. This incident took place 20 minutes from the *Nueva Esperanza en Dios* Humanitarian Zone. The soldiers were presumably stationed in the Biodiversity Zone of the Ávila Moreno family, of which the leader Pascual Ávila Moreno is a member, making it impossible to carry out the work of environmental protection and food production.

<sup>12</sup> They indicated, in particular, that the nine members who had attended the public hearing before the Inter-American Court in San José, Costa Rica, on February 11 and 12, were accompanied by two members of International Peace Brigades and one representative of the Ombudsman’s office. The paramilitaries had asked who was going to Cacarica and had ordered that the baggage be removed; 15 minutes later, on verifying the presence of the Ombudsman’s office and the international observers, they authorized everyone to continue on their journey.

<sup>13</sup> The representatives added that Elvia had arrived in Turbo the previous evening, after having taken part in the hearing before the Inter-American Court in San José, Costa Rica. In addition, she had taken part in the triathlon for the right to water of the *Comunidades Construyendo Paz* [Peace-building Communities] in REDA (“Network of Alternatives”) territories in the department of Cauca.

<sup>14</sup> They also indicated that the paramilitaries included the men who, on Saturday, February 16, had identified themselves as the “Urabeños” and who had intimidated the members of CAVIDA. They added that, around 12.40 p.m., the *Comisión de Justicia y Paz* had been informed during a communication with the Interior Ministry that, since February 20, the Ombudsman’s office had requested that measures be taken to protect the entry into CAVIDA from the direction of Turbo. The soldiers had advised that everything was under control. The members of CAVIDA who were questioned by the soldiers of the 12<sup>th</sup> River Battalion included the child Edgar Martínez, together with Elvia Hinestroza, Maritza Blandón, Ana Del Carmen Martínez, Ana Rosa Álvarez, Mary Luz Murillo, Inocencia Murillo, Zulma Salazar, Ilsa Edith Quinto, Bernardo Vivas, Jhon Jairo Mena, Melanio Moreno and Benkos Salazar.

and men were travelling, in the village of La Honda, Cacarica collective territory, which adjoins the Atrato River. The paramilitaries had threatened them and had told the Embera that they would be watching them in the municipality of Ríosucio, indicating that, there, the paramilitaries were in control of everything;

x) On February 27, 2013, three individuals identified as “Urabeño paramilitaries” detained a boat in which inhabitants of Cacarica, members of CAVIDA, were travelling, including Ángel Nellys Palacios who had testified during the public hearings held before the Court during the consideration of the case of *Marino López et al. (Operation Genesis) v. Colombia*;<sup>15</sup>

y) On February 28, 2013, there had been confrontations between the 17th Brigade and members of the FARC. The attacks lasted more than an hour and took place more than three hours away from the *Nueva Vida* Humanitarian Zone;

z) On March 2, 2013, near the village of San Higinio, Cacarica, fresh confrontations occurred between the Army (54<sup>th</sup> Forest Battalion) and the FARC guerrilla. The battle lasted an hour. It should be noted that this was presumably the second confrontation within three days,<sup>16</sup> and

aa) Danilo Rueda, member of the *Comisión de Justicia y Paz*, stated that he had been followed and threatened in the context of the attacks on the team that accompanied the victims in the case of *Marino López et al.*

5. The arguments of the representatives to justify their request for provisional measures, among which, they indicated:

a) The paramilitaries had set up permanent checkpoints in Turbo, Tumaradó, La Honda and Ríosucio, which were characterized by being transit points for the entry of food and goods, as well as the way out for surpluses, and for institutional procedures and arrangements;

b) The impossibility for the 13 members of CAVIDA and the women heads of household in Turbo to move about freely without being subjected to harassment and comments from the paramilitaries;

c) The actual connivance, tolerance and inaction of law enforcement personnel in relation to the paramilitaries;

d) The absence of safe conditions for those who have denounced the armed operations, and the actions of the companies *Maderas del Darién Pizano S.A.* and *CI Multifruits Ltda.* before the domestic and the international courts;

e) The actions of General Rito Alejo Del Rio and Fernando Londoño Hoyos, designed to delay or to prevent the judicial proceedings;

f) The continuing armed operations, confrontations between the military forces and the FARC, which have recently become more frequent;

g) The fact that the State is aware of the facts, because, although it has taken some steps to avoid irreparable damage, these have not been sufficient, because they have not brought about a real structural change that provides an effective response to the dangers, and

h) The existence of a generalized context of violations of the right to justice and the right to the truth that had prevented the State from recognizing the grave human rights violations and the usurpation of the lands of the communities, thus encouraging similar cases to continue to occur.

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<sup>15</sup> They also indicated that the paramilitaries told the crew that, in order to cross the river at that point, they must bring three gallons of gasoline on each crossing they made, and that they were obliged to inform the other communities of the municipality of Ríosucio about this order. In addition, the paramilitaries warned the members of CAVIDA that, if they continued to denounce the facts, “one of them would be forcibly silenced, to see if they would learn their lesson,” reiterating the support that the paramilitaries received from law enforcement personnel, owing to which they could move around Turbo and Ríosucio without any problem.

<sup>16</sup> In their brief of March 3, 2013, the representatives informed the Court of new incidents that, in their opinion, demonstrated the situation of extreme gravity and urgency.

6. The brief of February 26, 2013, in which the Inter-American Commission referred, *motu proprio*, to this request for provisional measures presented by the representatives and considered it "admissible, owing to the significant visibility that the leaders proposed as beneficiaries have had during the substantiation of the case of *Marino López et al. (Operation Genesis)* and to the progressive increase in the intensity and frequency with which a series of attacks and harassment against the members of the displaced populations from the *Comunidades de Autodeterminación Vida and Dignidad (CAVIDA)* have occurred in the months before and the days following the hearing." The Commission considered that, owing to their situation as presumed victims, and their special visibility and active leadership in the context of the case being considered by the Court, there was sufficient evidence to understand that there was a relationship between the exacerbation of the situation of danger and the progress of the case before the Court. The Commission mentioned that the proposed beneficiaries were in a "situation of aggravated vulnerability" as a result of the lack of an effective response by the State, the gravity of the events described, and the "situation of additional stigmatization" to which they had been exposed in the context of the proceedings before the Court. Consequently, the Commission "consider[ed] that the Court's intervention was important and necessary in order to avoid irreparable damage to the life and personal integrity of the proposed beneficiaries." In particular, when summarizing the procedure on preventive measures, the Commission reiterated some of the facts mentioned by the representatives and underscored the following:

- a) In July 2003, the Commission had visited the beneficiary communities, corroborating *in situ* the situation of vulnerability and risk, owing to the insecurity, which had led to the adoption of preventive measures. It indicated that, currently, those preventive measures remained in force and protected the Afro-descendant communities that are members of CAVIDA which have been resettled in the two humanitarian zones in the Cacarica river basin;
- b) The disproportionate impact of the conflict on the situation of the beneficiaries and the precarious situation in which they find themselves;
- c) Paramilitary groups had infiltrated the "*Esperanza en Dios*" and "*Nueva Vida*" Humanitarian Zones, and there had been attacks, presumed murders and forced disappearances, threats and harassment by paramilitary groups, and even by members of the security forces, several of which had taken place within the humanitarian zones and while members of the communities were travelling on the Atrato River;
- d) Since September 2012, some leaders had received death threats; there were paramilitary checkpoints where boats transporting members of the community had been detained; one of the leaders had been kidnapped and documents had been taken from him related to the defense of the ancestral territories and the case; paramilitaries had made inquiries in the community about the identity of its leaders and, also, there had been overflights of the humanitarian zones and fresh incursions by members of the security forces into the territories of the communities, harassing their members and damaging their crops;
- e) One of the heads of the *Comisión Intereclesial de Justicia y Paz*, the organization of the representatives in this case, had suffered a gun attack on his vehicle that had occurred precisely the day after the participation of the victims' representatives in the hearing before the Court, and which reveals possible actions to demotivate the participation of the representatives and the leaders in the subsequent procedural stages of the case;
- f) Following the hearing held before the Court, one of the leaders had been threatened because she had attended the hearing; and, in a place known as Tumaradó, paramilitaries had retained the boat that was transporting members of CAVIDA who had attended the hearing. This incident took place in the presence of personnel from the Ombudsman's Office. In addition, some leaders had been questioned because they had appeared before the Court, and called "*guerrilleros*";
- g) Recently, it had been noted that several documents related to the processing of the case of Operation Genesis before the Court, including the brief with pleadings, motions and evidence, were in the hands of a demobilized paramilitary, and

h) Even though the communities had sent a request for a comprehensive protection plan to the National Protection Unit in October 2012, they had not received a response.

7. The note of the Secretariat of February 27, 2013, in which, based on Article 27(5) of the Rules of Procedure and on the instructions of the President of the Court, the State was required to forward any observations it deemed pertinent on the representatives' request and the Commission's brief by March 7, 2013, at the latest. The State was asked to provide any other relevant information and documentation, in particular a detailed explanation on "the dangerous situations that had been alleged, the measures of protection that it had implemented in relation to preventive measures MC 79-99 decided by the Commission, or to any others decided by domestic authorities."

8. The brief of March 3, 2013, in which the representatives presented "new facts" in relation to their request for provisional measures.

9. The note of the Secretariat of March 5, 2013, in which, based on Article 27(5) of the Court's Rules of Procedure and on the instructions of the President of the Court, the State was required, in the observations that it had been asked to present on the said request, to refer also to the information presented by the representatives.

10. The communication of March 8, 2013, in which the State indicated that, in the context of preventive measures MC 70/99, the Inter-American Commission had convened a working meeting to be held on March 13 that year, together with the representatives of the beneficiaries, and therefore requested an extension of 20 days to present the State's report.

11. The note of the Secretariat of March 12, 2013, in which, on the instructions of the President of the Court, it advised that the extension requested by the State had been granted until April 1, 2013, in the understanding that, within the framework of preventive measures MC 70/99 and/or based on other provisions of domestic law, the State was already adopting the necessary measures to protect the life and personal integrity of the persons in whose favor the provisional measures had been requested, while this request was decided.

12. The brief of April 1, 2013, in which the State presented its observations. In particular, it indicated the following:

a) Regarding the factors relating to the military intervention in the zones of Cacarica:

i. The 54<sup>th</sup> Battalion, stationed in the municipality of Mutatá, Antioquia, is operating under the operational plans being implemented in the jurisdiction that covers CAVIDA, and is responsible for the municipalities of Riosucio and Carmen Del Darién. Since January 2012, this unit has been conducting territorial control operations in the said area, in order to provide permanent protection to civil society, its property and the State's resources, and to ensure the safety and integrity of the region's ethnic minorities, indigenous reserves, and Afro-descendant communities;

ii. The security forces have been present constantly in the Cacarica River area, before and after the activities of the 54<sup>th</sup> Battalion; there have been no significant alterations in public order, and any isolated incident that may have arisen was neutralized. According to the Ministry of Defense, it was aware of the presence of the 57<sup>th</sup> Front of the FARC in the area. The Army, based on intelligence activities, had been able to conduct operations that had produced favorable results for the State in the combat against the guerrilla; in particular, interventions in coca-processing laboratories and seizures, and

iii. The State considers the presence of the Army and the National Police to be a sovereign and legitimate act, stemming from protection and assistance policies, "designed merely to ensure the constitutional order, and the integrity of national territory, and to provide protection to the inhabitants of the region, in strict compliance with the international obligations to respect and ensure human rights recognized in Article 1(1) of the Convention."



b) Regarding the factors relating to the protection of the life and personal integrity of the proposed beneficiaries:

i. In September 2012, the members of CAVIDA forwarded to the National Protection Unit a request for collective measures of protection in the context of the concertation of the preventive measures processed by the Commission. The request was submitted to the Committee for Risk Assessment and Recommendation of Measures (hereinafter "CERREM") three times, and on the first three occasions, the Committee considered that it was unable to rule on the measures, because it had insufficient information to deal with the specific case of the community covered by the preventive measures;

ii. On March 6, 2013, during a special meeting of CERREM to examine the situations of the communities of Jiguamiandó and Curvaradó, the members of the *Comisión Intereclesial de Justicia y Paz*, and the 13 potential beneficiaries of the provisional measures, the following measures were approved for the communities that belong to CAVIDA:

- A 20-person boat-taxi with an engine, in accordance with transportation requirements;
- Two outboard motorboats able to accommodate from 10 to 14 people;
- Seven communication devices for the community (one for the community's boat), and
- A vehicle and driver, mainly for the six women living in Turbo.

iii. The National Protection Unit was aware of the threats received by some members of CAVIDA. It had contacted them to initiate the corresponding protection route established by Decree 4912 of 2011. However, the beneficiaries indicated that they were not interested in having individual protection measures, but rather wanted collective measures to be approved for all the members of CAVIDA. The State had informed the Human Rights Office of the National Police about these threats, and also the Office of the Prosecutor General;

iv. The International Affairs Directorate of the Prosecutor General's Office reported the existence of several judicial investigations in which members of CAVIDA were victims. The Prosecutor General's Office had also initiated, *ex officio*, inquiries into the presumed new acts of harassment against the proposed beneficiaries, in particular with regard to Sofía Roa and other members of the community who took part in the hearing before the Court. Currently, more than 50 investigations are underway related to the members of CAVIDA, "responding to its obligation to respect and ensure human rights," and

v. In response to the representatives' denunciation of "unilateral corporate actions," the Prosecutor General's Office had opened an investigation into *Maderas del Darién Pizano S.A.* for the offense of illegal exploitation of renewable natural resources.

c) The different denunciations or incidents reported by the representatives have been recorded in documents known as "historical records," which are forwarded to the entities. However, the State emphasized "the extreme need" that these incidents be denounced formally before the competent judicial authorities in order to ensure an appropriate investigation. The Prosecutor General's Office referred to the obstacles that prevent progress in the investigations: "the impossibility to locate, identify and individualize those responsible for the criminal behavior [...]. The difficulty, when trying to establish contact with the presumed victims, for them to come to the offices of the sectional prosecutors who are in charge of their cases [...]. The description of the incidents in a general and, at times, ambiguous manner that sometimes makes it difficult to make them correspond to a specific crime [...]";

d) The State advised, with regard to preventive measures MC 70-99, that a special monitoring and intervention process has been undertaken with regard to the situation of CAVIDA; 12 follow-up and concertation meetings had been held with the petitioners, beneficiaries and the different State entities involved, such as the one held with the presence of the President and staff of the Executive Secretariat and of the Protection Group in December 2012. Also, at three sessions of the Commission, the most recent on March 13, 2013, working meetings had been held in order to gather new information and to continue monitoring the actions that have been reported in more than 20 reports that the State has presented to the Commission;

e) The State has made significant efforts to protect the life and integrity of all the members of CAVIDA and has been trying to provide comprehensive protection to the communities. The State understands that the judgment on merits that the Court would deliver in the case of López *et al.* –

Operation Genesis would cover these issues, because the protective nature of provisional measures was meaningless once the Court has delivered a judgment, and

f) Based on the foregoing, the State asked that the Court reject the request for provisional measures that had been presented and reiterated that it was maintaining rigorously all the mandates, orders, actions and measures that had been implemented in the context of the preventive measures before the Commission.

13. The note of the Secretariat of April 8, 2013, in which, on the instructions of the President of the Court, the representatives and the Inter-American Commission were given until April 22, 2012, to present their observations on the said report of the State.

14. The brief of April 22, 2013, in which the representatives presented their observations on the State's report. They indicated the following:

a) The State's argument which considers the provisional measures "unjustified" because an order on preventive measures has been in existence since 1997 is unsubstantiated, because the preventive measures granted by the Commission were awarded owing to the forced displacements produced by Operation Genesis between February 24 and 27;

b) The existence of preventive measures has a different factual framework from that of the provisional measures that are being requested, because the latter respond to new facts and risk factors related to the processing of the contentious case. In addition, the judgment on merits that the Inter-American Court may eventually deliver does not refer to the facts that are the grounds for the request for provisional measures, which are designed to avoid irreparable damage;

c) The threats and harassment that have been recorded by both the representatives and the Commission have increased as a result of the litigation of the contentious case of Operation Genesis before the Court. In the opinion of the representatives, these criminal acts are related to their status as plaintiffs and their purpose is to detain the actions to reclaim the rights of the proposed beneficiaries;

d) The State had made no mention of the risk factors that are faced by the beneficiaries of the preventive measures, and had not indicated the specific measures that it was taking to respond to the paramilitary checkpoints located in Tumaradó, which have resulted in a serious threat to the life and integrity of the proposed beneficiaries, because these checkpoints have blocked the entry of food and limited the mobility of the inhabitants;

e) The measures that have been approved, according to the State, have not been implemented effectively. In particular, the provision of collective boats has not materialized owing to the impossibility of travelling to Turbo for safety reasons, and

f) The material measures granted, although they represent a protection mechanism, are limited in nature, because they are not complemented by other appropriate measures that would prevent the irreparable damage of which the proposed beneficiaries could be victims.

15. The brief of April 23, 2013, in which the Commission presented its observations on the State's report. It alleged that the State's arguments on the presence of members of the security forces is general in nature, and failed to include a concise explanation of the relationship between the territorial control operations in the area and the harassment and threats by paramilitary groups. In the Commission's opinion, the lack of information about the presence of the paramilitaries in the area, and the Government's efforts to combat the 57<sup>th</sup> Front of the FARC, was an indication of the ineffectiveness of the measures mentioned by the State. The Commission indicated that the preventive measures adopted since 1997 are of a general nature; thus, they have different implications than those of provisional measures, which are designed to deal with "a more specific and concrete situation of risk, directly related to leadership and special visibility, suffered by some people as members of CAVIDA or participants in the contentious case."

16. The brief of May 9, 2013, in which the representatives presented additional information on the request for provisional measures. The representatives referred to supposed incidents that

had taken place between May 3 and 6, 2013: detention and search by paramilitaries of boats in which members of CAVIDA and, on one occasion, of the representatives' organization were travelling, and death threats proffered against the leader Marcos Velásquez by paramilitaries who accused him of being a member of the guerrilla. The representatives presented information on individuals who were not proposed beneficiaries of provisional measures, but maintained their previous requests.

17. The notes of the Secretariat of May 10 and 15, 2013, in which, on the instructions of the President, the State and the Commission were asked to present, by May 17, 2013, at the latest, any pertinent observations and information on the information provided and the request made by the representatives in their last brief

18. The brief of May 16, 2013, in which the Commission presented its observations on the information provided by the representatives in their last brief. The Commission reiterated its previous observations.

19. The brief of May 17, 2013, in which the State presented its observations on the information provided by the representatives in their last brief. The State indicated the following:

- a) It emphasized that the "United Self-Defense Forces of Colombia, misleadingly called 'paramilitaries,' had demobilized between 2003 and 2007, and the members had become part of the Justice and Peace process"; also, that "the criminal bands do not have the same connotation that the extinct Self-Defense Forces had in the past";
- b) At the present time, the presence of the FARC has been identified in the general area of the Atrato River and, in particular, that of the criminal band "Los Urabeños" at the mouth of the river at the Gulf of Urabá. It added that the FARC were setting up illegal "checkpoints" from time to time;
- c) The security forces had increased their presence in the area, specifically in the villages of La Honda and Puente América in the municipality of Riosucio and the village of Tumaradó. The Marine Expeditionary Unit had conducted prevention and protection operations by surveillance, interdiction and ensuring safety on the river. The Unit had set up temporary checkpoints at the mouths of secondary rivers and channels, such as the Perancho River, the conditions of which prevent navigation by the Navy;
- d) The presence of bands of common criminals with possible links to "Los Urabeños" had been determined in the northern area of the Atrato River, near the municipal capital of Riosucio and in the villages of La Honda and Tumaradó. Consequently, the Navy had increased safety measures in order to mitigate the threats to the civilian population, including: setting up a River Combat Group in the Atrato River basin; the efforts of intelligence operations, the Urabá Police Command, and the Anti-criminal Bands Prosecutor are being coordinated in order to identify members of the said bands, and this has provided information for the respective judicial proceedings; a Naval Floating Device had been established to strengthen the safety mechanism of the 16<sup>th</sup> River Battalion, and two additional river units had been assigned to control the river from Riosucio to the mouths of the Atrato;
- e) An inter-institutional verification visit (representatives of the Vice Presidency, the Ministries of the Interior, Foreign Affairs and Defense, and the Attorney General's Office) had verified the efforts of the Navy in the said areas and, during a private meeting with the communities (without the presence of the security forces), observed an improvement in the perception of security;
- f) The National Police have also implemented actions to ensure the security and mobility of the population of Urabá to counter the influence of several illegal groups in Cacarica (Riosucio), in response to monitoring report 018 of 2012 of the Ombudsman's Office, such as operational plans, coordination of strategies under the *Corazón Verde* Plan, permanent presence of the Mobile Rifles Squadron, search of vessels on the Atrato River, and monitoring of the criminal bands;
- g) The Human Rights Unit of the National Police and the Urabá Police Department have established a direct communication channel with the communities that are beneficiaries of the preventive measures established by the Inter-American Commission. In addition, there is permanent communication between the Command of the 16<sup>th</sup> River Battalion, the representatives of the

proposed beneficiaries, International Peace Brigades, and the President of the Republic's Presidential Human Rights and International Humanitarian Law Program in order to coordinate the requests concerning travel on the Atrato River made by members of CAVIDA, while the Navy is ready to ensure their safety.

- h) During a meeting on May 16, 2013, with several proposed beneficiaries and their representatives, the Commander of the River Battalion indicated that security had been increased in order to avoid situations such as those described by the representatives in their brief of May 9 and, regarding the events of May 6, it was revealed that the communication channels are extremely effective. During these events, it was not possible to detain the individual who the beneficiaries indicated was responsible, nor was it possible to verify that he was a member of Los Urabeños; moreover, the community had not denounced what happened to the authorities, which they should do in any situation of criminal acts that have an impact on them or of which they are aware;
- i) Regarding the measures that were agreed on, the vehicle for the three Turbo women is available and had been accepted by the representatives and the proposed beneficiaries, and
- j) The State has indicated the actions taken to confront the situations of risk and will continue to implement effective measures for the protection of the proposed beneficiaries and of the community, as well as to ensure the free mobilization of the members of CAVIDA. Actions were being taken against all the illegal agents in the area. No complaints had been received related to human rights violations committed by members of the Navy or of supposed complicity or acquiescence. The beneficiaries of the preventive measures, which include the proposed beneficiaries of provisional measures, have indicated that they are not interested in receiving individual protection measures, but rather collective measures for all the members of CAVIDA, and these had been adopted by the competence instance and included precise measures developed specifically with the representatives. Based on all the above, the State again asked that the Court reject the request for provisional measures.

#### **CONSIDERING THAT:**

1. Colombia has been a State Party to the American Convention since July 31, 1973, and, pursuant to Article 62 of the Convention, accepted the contentious jurisdiction of the Court on June 21, 1985.
2. Article 63(2) of the American Convention stipulates that, "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent, in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission."
3. According to Article 27 of the Court's Rules of Procedure:<sup>17</sup>
  1. At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.
  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.
  6. If the Court is not sitting, the Presidency, in consultation with the Permanent Commission and, if possible, with the other Judges, shall call upon the State concerned to adopt such urgent measures as may be necessary to ensure the effectiveness of any provisional measures that may be ordered by the

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<sup>17</sup> Rules of Procedure approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

Court during its next session.

4. This request for provisional measures is related to a case being heard by the Court, in the context of processing the *case of Marino López et al. (Operation Genesis) v. Colombia*, submitted to the Court on July 25, 2011.

5. This Court has established that under international human rights law, provisional measures are not merely preventive, in that they preserve a juridical situation, but rather they are essentially protective, since they protect human rights, inasmuch as they seek to avoid irreparable damage to persons.<sup>18</sup> The preventive nature of provisional measures is related to the context of international litigations. In this regard, the object and purpose of the measures is to ensure the integrity and effectiveness of the decision on merits and, thus, avoid harm to the rights in litigation, a situation that could render null or useless the practical effects of the final decision. In this way, provisional measures permit the State in question to comply with the final decision and, if appropriate, to proceed to make the reparations ordered.<sup>19</sup> Regarding the protective nature, this Court has indicated that, provided the basic requirements are met, provisional measures become a real jurisdictional guarantee of a preventive nature, because they protect human rights, inasmuch as they seek to avoid irreparable damage to persons.<sup>20</sup>

6. The three conditions required by Article 63(2) of the Convention for the Court to be able to order provisional measures must concur in any situation in which they are requested.<sup>21</sup> Based on its competence, in the context of provisional measures the Court may consider only and strictly those arguments that are directly related to extreme gravity, urgency and need to avoid irreparable damage to persons. Any other fact or argument may only be examined and decided, if appropriate, during the consideration of the merits of a contentious case.<sup>22</sup>

7. Regarding the requirement of "gravity," for the effects of the adoption of provisional measures, the Convention requires this to be "extreme"; in other words, at its most intense and

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<sup>18</sup> Cf. *Case of the "La Nación" newspaper*. Provisional measures with regard to Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, fourth considering paragraph; *Matter of the Aragua Penitentiary Center "Tocorón Prison."* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2010, sixth considering paragraph, *Case of Kwas Fernández*. Provisional measures with regard to Honduras. Order of the Inter-American Court of Human Rights of July 5, 2011, twenty-second considering paragraph, and *Matter of Castro Rodríguez*. Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of February 13, 2013, fifth considering paragraph.

<sup>19</sup> Cf. *Matter of Belfort Istúriz et al.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of April 15, 2010, sixth considering paragraph; *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Inter-American Court of Human Rights of May 28, 2010, fourth considering paragraph; *Carpio Nicolle et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, sixteenth considering paragraph; *Matter of the Capital Detention Center El Rodeo I and El Rodeo II*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of February 8, 2008, seventh considering paragraph; *Matter of the "El Nacional" and "Así es la Noticia" newspapers*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of November 25, 2008, twenty-third considering paragraph, and *Matter of Luis Uzcátegui*. Provisional measures with regard to Venezuela. Order of the Court of January 27, 2009, nineteenth considering paragraph.

<sup>20</sup> Cf. *Case of Kwas Fernández*, twenty-second considering paragraph; *Matter of the Capital Detention Center El Rodeo I and El Rodeo II*, eighth considering paragraph, and *Case of Ivcher Bronstein*. Provisional measures with regard to Peru. Order of the Inter-American Court of Human Rights of November 21, 2000, ninth considering paragraph.

<sup>21</sup> Cf. *Case of Carpio Nicolle et al.*, fourteenth considering paragraph; *Matter of the Aragua Penitentiary Center "Tocorón Prison,"* eighth considering paragraph, and *Matter of the Ciudad Bolívar Detention Center "Vista Hermosa Prison."* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of May 15, 2011, eighth considering paragraph.

<sup>22</sup> Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 29, 1998, sixth considering paragraph; *Matter of Guerrero Larez*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of November 17, 2009, sixteenth considering paragraph, and *Case of Rosendo Cantú et al.* Provisional measures with regard to Mexico, Order of the Inter-American Court of Human Rights of February 2, 2010, fifteenth considering paragraph.

highest level. The requirement of “urgency” signifies that the risk or threat involved must be imminent, and this requires the response to remedy it be immediate. Lastly, with regard to the damage, there must be a reasonable probability that it will occur and it should not affect legal rights or property that can be repaired.<sup>23</sup>

8. The standard of assessment *prima facie* in a matter and the application of presumptions when dealing with the need for protection have led this Court to order measures on different occasions.<sup>24</sup> Although, when ordering provisional measures, this Court has sometimes considered it essential to individualize the persons who are at risk of suffering irreparable damage in order to grant them measures of protection,<sup>25</sup> at other times, the Court has ordered the protection of a group of persons who have not been identified by name previously, but who can be identified and determined and who are in a situation of grave danger because they belong to a group or community.<sup>26</sup>

9. Furthermore, the Court recalls that, in order to determine whether a situation of extreme gravity and urgency of avoiding irreparable damage exists, it is possible to assess all the political, historical, cultural or any other factors or circumstances that affect the beneficiaries or that place them in a situation of vulnerability at a specific moment and at risk of having their rights violated. This situation can increase or decrease over time depending on innumerable variables.<sup>27</sup>

10. In other cases, the Court has ordered the protection by provisional measures of a group of persons who have not been identified by name previously, provided that they could be identified and determined and were in a situation of grave danger because they belonged to a group or a community.<sup>28</sup> In several of these cases, the beneficiary community was organized and located in a specific geographical place, and its members could be individualized and identified. The relevant factor when ordering provisional measures in several of these cases was that, because they formed part of the said community, they were all in a similar situation of risk of suffering attacks on their personal integrity and their life, as well as being forced to displace from their territory.

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<sup>23</sup> Cf. *Matters of the Monagas Detention Center (“La Pica”), Capital Region Penitentiary Center Yare I and Yare II (Yare Prison), Central Occidental Region Penitentiary Center (Uribana Prison), and Capital Detention Center El Rodeo I and el Rodeo II*. Provisional measures with regard to Venezuela. Orders of the Inter-American Court of Human Rights of November 24, 2009, third considering paragraph, and *Matter of Belfort Istúriz et al.*, eighth considering paragraph.

<sup>24</sup> Cf., *inter alia*, *Case of Caballero Delgado and Santana*. Request for provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of December 7, 1994, third considering paragraph, and *Matter of the Socio-educational Unit*. Provisional measures with regard to Brazil. Order of the Inter-American Court of Human Rights of February 25, 2011, fifth considering paragraph.

<sup>25</sup> Cf. *Case of Haitians and Dominicans of Haitian Origin in the Dominican Republic*. Request for provisional measures with regard to *Dominican Republic*. Order of the Inter-American Court of Human Rights of August 18, 2000, eighth considering paragraph, and *Matter of the Ciudad Bolívar Detention Center “Vista Hermosa Prison,”* seventeenth considering paragraph.

<sup>26</sup> Cf., *inter alia*, *Matter of the Peace Community of San José de Apartadó*. Provisional measures with regard to Colombia, Order of the Inter-American Court of Human Rights of November 24, 2000, seventh considering paragraph, and *Matter of the Ciudad Bolívar Detention Center “Vista Hermosa Prison,”* seventeenth considering paragraph.

<sup>27</sup> Cf. *Matter of Carpio Nicolle*, twenty-sixth considering paragraph, and *Matter of Alvarado Reyes et al.* Provisional measures with regard to Mexico, Order of the Inter-American Court of Human Rights of May 15, 2011, twentieth considering paragraph.

<sup>28</sup> Cf. *Case of Luisiana Ríos et al. (Radio Caracas Televisión–RCTV)*. Provisional measures with regard to Venezuela. Order of the Court of September 12, 2005, eleventh considering paragraph; *Matter of the Peace Community of San José de Apartadó*. Provisional measures with regard to Colombia. Order of the Court of June 18, 2002, eighth considering paragraph, and *Matter of the Communities of the Jiguamiandó and of the Curbaradó*. Provisional measures with regard to Colombia. Order of the Court of March 6, 2003, ninth considering paragraph.

11. With regard to this request for provisional measures, the Court observes that it has been presented by the organization that represents the presumed victims in a contentious case that it is hearing, but only for 14 of them (*supra* footnote 3). Consequently, and notwithstanding the fact that these persons are members of communities that face similar risks, the Court will now consider the said request in the terms in which it was submitted; to this end, it finds it pertinent to take into account the more general security situation of the displaced communities of the Cacarica area.

12. In their request, the representatives referred to different incidents involving both paramilitary groups – and other illegal organized armed groups – and also State agents, who, according to their allegations, on numerous occasions have threatened, harassed and intimidated the inhabitants of CAVIDA, acts that have jeopardized their life and integrity; while members of the security forces have repeatedly entered the humanitarian zones terrorizing the population. They also reiterated that the State authorities are aware of these facts and that the measures designed to avoid their repetition have been insufficient, “because they do not involve a real and effective structural change that permits an effective response to be provided to the danger that the peoples of the Cacarica area may be in.” In addition, they recalled that all these incidents had taken place while armed operations – confrontations between the military forces and the FARC – were underway, and these have become more frequent.

13. For its part, the State acknowledged the presence of armed groups near the humanitarian zones. Although, in its first report, the State indicated that, at that time, “it was only aware of the presence of the 57th Front of the FARC” in that area (*supra* having seen paragraph 12), in its second report it indicated that other illegal armed groups or “criminal bands” were also present that could affect or endanger the population (*supra* having seen paragraph 19). In addition, the Army’s 17th Brigade and the Navy were stationed in the area, and were carrying out patrols and intelligence operations against the FARC in the territory, while confrontations were taking place between the guerrilla and the 17th Brigade.

14. The Inter-American Commission has granted preventive measures in favor of the members of CAVIDA since December 1997, specifying that the situation of risk has continued over time and that the State had denied the existence of paramilitary groups in the area, creating a situation of defenselessness for the members of CAVIDA and, thus, failing to comply with its obligation to protect. In addition, the Commission has referred to acts of violence and direct threats that have increased as the contentious case before the Inter-American Court progresses.

15. The Court observes that the incidents described by the representatives and the Commission are taking place in a region that is particularly affected by violence and displacement in the context of the armed conflict, and in which it is alleged that several illegal armed groups have a certain presence and control of the territory and the rivers in areas through which members of the black communities travel, and in reserves of the indigenous peoples.

16. In this regard, the Early Warning System (“EWS”) of the Colombian Ombudsman’s Office, in particular the Delegate Ombudsman for the Prevention of Risks of Violations of Human Rights and International Humanitarian Law, in a “follow-up note” of November 30, 2012, on the “risk report” issued in December 2011, acknowledged the presence of paramilitary groups in the Cacarica River basin and near the Atrato, between the municipalities of Riosucio and Turbo, controlling cargo and passengers travelling on the rivers and, consequently, restricting the mobility of the communities.<sup>29</sup> In this area, their actions have severely affected the communities

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<sup>29</sup> The Ombudsman’s Office added that “[t]he Urabeños have stationed individuals linked to this structure, called “point persons” in several strategic areas of the Bajo Atrato.” Also, near the Atrato, between the municipalities of Riosucio and Turbo, presumed members of the Urabeños control the transport of cargo and passengers. The report

of the Cacarica River basin, because they were detaining “*chalupa*-type” boats, collecting forced taxes on the entry of foodstuffs and supplies and the egress of lumber and subsistence crop surpluses. In addition, as underscored in the report, threats and accusations have been made, money has been stolen from community shops as well as the gasoline required for the survival of the civilian population, essential for the operation of the boats and the community’s electricity generators.<sup>30</sup>

17. The report also mentioned that “[t]he presence of public security units within the villages or in the crop-growing areas of the communities has led to harassment and confrontations with the illegal groups. The FARC has resorted to the use of landmines in areas that are increasingly nearer to the communities.” In addition, the report indicated that “the fact that there are military operations in the Bajo Atrato has resulted in forced displacements, and also restrictions to movement.”<sup>31</sup>

18. In this context, the provisional measures were requested only in favor of 14 members of the said communities, most of whom are leaders of displaced communities or of CAVIDA and, in addition to being petitioners before the inter-American system, they carry out activities relating to the denunciation of incidents and the filing of claims for collective lands, in a context in which community leaders have been forced to limit their participation in these activities or in which they and members of their families have been murdered or threatened by illegal armed groups.<sup>32</sup> However, it has not been explained clearly whether the dangerous situations that the proposed beneficiaries have experienced, and which the representatives and the Commission have described, are particularly different in relation to the general risk that exists for the other members of their communities.

19. In this regard, the Court stresses that, in its two briefs, the State failed to provide information on whether it had assessed the risk factors faced by each of the proposed beneficiaries. However, the State has indicated its willingness, under the preventive measures ordered by the Inter-American Commission, to monitor the general situation of risk of the

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indicates that these groups carry communication radios, guns and rifles; they have fast boats, which allow them to control the navigation on the Sucio and Atrato Rivers, and also the transit of people, timber and fuels, and they keep watch over the route that joins the village of Llano Rico to Belén de Bajira, a strategic zone that communicates the banana sector and the Serranía de Abibe with the watersheds of the Jiguamiandó and Curbaradó and the Bajo Atrato. Early Warning System (“EWS”), Ombudsman’s Office, Delegate Ombudsman for the Prevention of Risks of Violations of Human Rights and International Humanitarian Law, Follow-up Note No. 018-12, Second note to Risk Report No. 031-09 A.I, November 30, 2012, folios 27 and *ff.*

<sup>30</sup> Early Warning System (“EWS”), Ombudsman’s Office, Delegate Ombudsman for the Prevention of Risks of Violations of Human Rights and International Humanitarian Law, Follow-up Note No. 018-12, Second note to Risk Report No. 031-09 A.I, November 30, 2012, folio 31.

<sup>31</sup> “These conditions have meant that many indigenous communities from the Salaquí and Truandó river basins, who were forcibly displaced starting in the mid-1990s and in 2003, have no guarantees in order to be able to return to their territories, and this has seriously affected their culture and exacerbated problems such as the disintegration of the community, uprooting, and the weakening of collective resistance projects.” Early Warning System (“EWS”), Ombudsman’s Office, Delegate Ombudsman for the Prevention of Risks of Violations of Human Rights and International Humanitarian Law, Follow-up Note No. 018-12, Second note to Risk Report No. 031-09 A.I, November 30, 2012, folio 51.

<sup>32</sup> The report of the Ombudsman’s Office indicates that “[i]n this context of the extensive presence of illegal armed groups with the capacity to control both the territory and the people, the process of restitution of collective territory in the Curbaradó and Jiguamiandó river basins has also been affected.” The report added that “[i]n view of the systematic nature of the death threats [against leaders], the right of the communities to participate freely in the restitution processes that are underway in the Bajo Atrato has been violated and, in some cases, the leaders have even been forced to limit the frequency of their meetings with their communities or have been obliged to limit their participation in activities.” Regarding murders, the report of the Ombudsman’s Office indicates that “[t]he effects of the threats on the closest family members of the leaders are so serious that leaders have even been murdered together with their underage children by illegal armed groups following the demobilization of the AUC.” Early Warning System (“SAT”), Ombudsman’s Office, Delegate Ombudsman for the Prevention of Risks of Violations of Human Rights and International Humanitarian Law, Follow-up Note No. 018-12, Second note to Risk Report No. 031-09 A.I, November 30, 2012, folios 34 to 36.



members of CAVIDA and is in the process of implementing a series of specific measures of protection in their favor (*supra* having seen paragraph 19), in coordination with them and their representatives.

20. In this regard also, the information provided by the State that, during the last meeting convened by the Inter-American Commission on the preventive measures, "the beneficiaries of the preventive measures [ordered by the Commission, that] cover the proposed beneficiaries of provisional measures, have indicated that they are not interested in individual measures of protection, but rather collective measures for all the members of CAVIDA, which were, in fact, adopted by the competent instance and include precise measures, specifically agreed on with the representatives" (*supra* having seen paragraph 19). This has not been contested by either the representatives or the Inter-American Commission.

21. In addition, the representatives and the Commission have not made a clear connection between the alleged facts, most of which occurred prior to the said hearing, and the increased visibility that these individuals have acquired owing to their participation in the hearing or their status as community leaders. Moreover, as grounds for their request, they even refer to supposed incidents that have occurred to other people who are not the proposed beneficiaries.

22. Despite the above, it should be repeated that the preventive measures ordered by the Commission remain in force. The State is adopting measures of protection and has expressed its willingness to maintain rigorously all the mandates, orders, actions and measures that had been implemented in the context of the preventive measures before the Commission" (*supra* having seen paragraph 19). Thus, and without prejudice to the Court continuing to monitor the situation of the presumed victims in the case that it is hearing, the State has undertaken to continue adopting collective measures of protection and, as required also those of an individual nature, in favor of these persons and other members of CAVIDA who may require this, within the framework of the said preventive measures. Thus, it is evident that it corresponds to the State to assess the specific situation of risk of each of the proposed beneficiaries. Consequently, this Order in no way affects the measures of protection that the State has already implemented, or interferes with the preventive measures ordered by the Inter-American Commission.

23. In addition to the above, the Court reiterates that the State has the constant and permanent obligation to comply with the general obligations that correspond to it under Article 1(1) of the Convention to respect the rights and freedoms recognized in this instrument and to ensure their free and full exercise to all persons subject to its jurisdiction, under any circumstance.<sup>33</sup> Consequently, the Court reiterates to the State that, based on the principle of complementarity and subsidiarity, it is the States themselves that are primarily obliged to guarantee the life, security and integrity of the individual through their domestic organs and jurisdiction. In this way, in order to implement the obligation to protect the individual, when necessary, the States must conduct individual or specific risk assessments and, as appropriate, implement the necessary measures of protection to ensure the security of people in a situation of risk.

**THEREFORE:**

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

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<sup>33</sup> Cf. *Case of Velásquez Rodríguez*. Provisional measures with regard to Honduras. Order of the Court of January 15, 1988, third considering paragraph; *Case of Helen Mack Chang et al.* Provisional measures with regard to Guatemala. Order of the Court of November 16, 2009, thirty-first considering paragraph, and *Case of García Prieto et al.* Provisional measures with regard to El Salvador. Order of the Court of February 3, 2010, fifteenth considering paragraph.

in exercise of its authority under Article 63(2) of the American Convention and Article 27 of its Rules of Procedure,

**DECIDES:**

1. To reject the request for provisional measures filed in favor of Bernardo Vivas Mosquera, Jhon Jairo, Sofía Roa, Elvia Hinestroza Roa, Etilvia Páez, Edwin Orejuela, Sofía Quinto, Ángel Nellys Palacios, Emedelina Palacios, Josefina Mena, Pascual Ávila Moreno and Alicia Mosquera Hurtado, without prejudice to the undertaking made by the State to continue taking collective and, if appropriate, individual protection measures in favor of these persons and other members of CAVIDA who may require this, within the framework of the preventive measures decided by the Inter-American Commission on Human Rights and in compliance with its obligations un Article 1(1) of the American Convention, segues indicated in considering paragraphs 22 and 23 of this Order.

2. To require the Secretariat to notify this Order to the State, the Inter-American Commission, and the representatives of the beneficiaries/presumed victims.

Diego García-Sayán  
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Roberto de Figueiredo Caldas

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary