

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 22, 2011**

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

MATTER OF GIRALDO CARDONA *ET AL.*

HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights of October 28, 1996, and the Orders of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of February 5 and April 16, 1997, June 19 and November 27, 1998, September 30, 1999, December 3, 2001, November 29, 2006, and February 2, 2010. In the last Order, the Court decided, *inter alia*:

1. To require the State to maintain and adopt the necessary measures to continue protecting the life and physical integrity of Islena Rey and Mariela de Giraldo and the latter's two minor daughters, Sara and Natalia Giraldo, and to report to the Court in this regard.

2. To require the State to provide information on the undertaking made, as indicated in the thirtieth and thirty-fourth considering paragraphs of [the said] Order.

3. To reiterate to the State that it must allow the beneficiaries or their representatives to participate in the planning and implementation of the protection measures and, in general, keep them informed of any progress in the measures ordered by the Inter-American Court of Human Rights.

4. To lift the measures adopted in favor of Sister Noemy Palencia, as established in the eighteenth considering paragraph of [the said] Order.

5. To require the parties to forward information on the public act to be held on February 26, 2010, in relation to the relaunch of the Civic Human Rights Committee of Meta.

[...]

2. The briefs of June 1 and 23, October 26 and December 13, 2010, in which the Republic of Colombia (hereinafter the "State" or "Colombia") reported on the implementation of the provisional measures in this matter.

3. The communications of May 4 and 10, August 25, September 10, October 14 and December 23, 2010, and February 16, 2011, in which the representatives of the beneficiaries (hereinafter the "representatives") presented their observations on the State's report, as well as additional information concerning the implementation of these provisional measures.

4. The communications of April 22, August 5 and December 17, 2010, and February 15, 2011, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented its observations on the State's reports, and on the corresponding observations and information presented by the representatives concerning the implementation of these provisional measures.

CONSIDERING THAT:

1. Colombia has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since July 31, 1973, and accepted the compulsory jurisdiction of the Inter-American Court, pursuant to Article 62 of the Convention, on June 21, 1985.

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

3. According to Article 63(2) of the Convention, the provisional measures ordered by the Court are binding on the State, because a basic principle of international law, supported by international case law, indicates that States must comply with their international treaty obligations in good faith (*pacta sunt servanda*).¹

4. Under international human rights law, provisional measures are not only preventive in the sense that they preserve a juridical situation, but they are also essentially protective because they protect human rights, insofar as they seek to avoid irreparable damage to persons. Provisional measures are applicable provided the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met. In this way, provisional measures become a real jurisdictional guarantee of a preventive nature.²

5. These provisional measures relate to the alleged murder of Josué Giraldo Cardona, President of the Civic Human Rights Committee of Meta (hereinafter also "Civic Committee of Meta" or "Civic Committee") in October 1996, despite the existence of precautionary measures granted in favor of the members of the said organization since November 1995. The representatives indicated that the processing of the said petition had commenced in 1996 and that a request had been made to combine it "with the processing of the case of the Patriotic Union (*Unión Patriótica*)." In addition, in a communication of April 22, 2010, the Inter-American Commission informed the Court that the case of Josué Giraldo Cardona was at the admissibility and merits stage and that it had "decided not to joinder it to the case [...] of the Patriotic Union." Based on the foregoing, the Court notes that, in accordance with its jurisdiction within the framework of provisional measures, it can only consider the merits of arguments relating strictly and directly to the extreme gravity and urgency and need to avoid irreparable damage to persons. Hence, in order to decide whether to maintain the provisional measures in force, the Court must analyze whether the situation of extreme gravity and urgency that led to their adoption persists, or whether new circumstances, which are equally extremely grave and urgent, warrant keeping them in

¹ Cf. *Matter of James et al.* Provisional Measures with regard to Trinidad and Tobago. Order of the Court of June 14, 1998, sixth considering paragraph; *Matter of María Lourdes Afiuni*. Provisional measures with regard to Venezuela. Order of the President of the Court of December 10, 2010, fourth considering paragraph, and *Matter of José Luis Galdámez Álvarez et al.* Provisional measures with regard to Honduras. Order of the President of the Court of December 22, 2010, third considering paragraph.

² Cf. *Case of the "La Nación" Newspaper*. Provisional measures with regard to Costa Rica. Order of the Court of September 7, 2001, fourth considering paragraph; *Matter of María Lourdes Afiuni*, supra note 1, sixth considering paragraph, and *Matter of José Luis Galdámez Álvarez et al.*, supra note 1, sixth considering paragraph.

force. Any other issue may only be brought to the Court's attention by means of a contentious case.³

A. Regarding the situation and measures of protection implemented in favor of the beneficiaries

a.1 Regarding the measures of security and protection adopted in favor of the beneficiary Islena Rey

6. In its last report, the State advised that the measures of protection agreed in favor of Islena Rey consisted of "two (2) escort units contracted out and one (1) agent escort, equipped with their respective weapons, supported by an armored car."⁴ In addition, in December 2010, it indicated that, at a meeting held on October 7, 2010, the beneficiary Islena Rey had requested that an "escort who she trusted" be hired to complete her protection scheme. In this regard, it advised that, on October 13, 2010, the Administrative Department of Security (hereinafter "the DAS"), "having complied with the entire procedure requested," had hired the person proposed by the beneficiary as the escort who she trusted.⁵ In addition, in its report of October 6, 2011, it indicated that the said beneficiary had been provided with two "Avantel" means of communication since February 21, 2007, and one mobile telephone since February 28, 2006, all of which she still uses. Colombia also indicated that the beneficiary had been assigned "a monthly [...] fuel supply," and this was confirmed in its report of December 2010. Moreover, in that report, it added that, because of the problem concerning the fuel supply mentioned by the beneficiary, "she was being [provided] with vouchers for smaller amounts" so as to solve the problem, "because there was no other way to deal with the supply of fuel." It also indicated that, although the vehicle assigned to the beneficiary had "[experienced] mechanical failures [...], the Ministry of the Interior and Justice had proceeded to replace [it] temporarily with another vehicle while it was checked and the necessary repairs were made." The State described the repairs to the vehicle and indicated that they corresponded to normal wear and tear and "not to negligence on the part of the State officials."

7. The State referred to the measures of security put in place to protect the Civic Committee's office. In this regard, it indicated that the "Committee for the Regulation and Evaluation of Risk [CRER] had recommended that the National Police assess the security of the building in which the said Committee's office was located. In this regard, the State indicated that "it [was] not possible to reinforce the said office, [because] the beneficiaries [were] not the owners [of the building,] but only the lessees." In addition, it advised that "law enforcement units, headed by the National Police, are [conducting] continuous police inspections of the offices of the Civic Human Rights Committee of Meta in order to

³ Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Court of August 29, 1998, sixth considering paragraph; *Matter of María Lourdes Afiuni*, *supra* note 1, eighth considering paragraph, and *Matter of José Luis Galdámez Álvarez et al.*, *supra* note 1, seventh considering paragraph.

⁴ Previously, in a report of October 6, 2010, Colombia indicated that the protection scheme for the beneficiary Islena Rey "consisted of two (2) escorts and one (1) armored car," to which "support in the form of fuel had been assigned."

⁵ Previously, in its report of June 1, 2010, the State had advised in relation to the protection scheme for the beneficiary Islena Rey that, up to March 31, 2010, the scheme consisted of two hired escorts and an escort agent, plus a vehicle. However, in December 2009 and March 2010, the beneficiary asked that one of the hired escorts be changed, "arguing that she lost confidence in the said hired escort"; therefore, the beneficiary presented the résumé of two persons of trust. The DAS proceeded to examine said résumés; however, "unfortunately" the persons proposed by the beneficiary did not satisfy the age requirement; therefore, the beneficiary was informed that she could present new resumes. Despite what the State indicated in the said report, the escort hired by the DAS in October 2010 was one of the two persons of trust initially proposed by the beneficiary.

guarantee the life and physical integrity of its members, particularly Islena Rey, a member of the organization's board." The State emphasized that it "is unaware of any new problems regarding the operation of the protection scheme for the beneficiary [Islena Rey]; however, [...it] express[ed] its willingness to continue providing the necessary collaboration."

8. Regarding the representatives' observation that the beneficiary Islena Rey had not been informed about the changes in the protection scheme made by the DAS, in June 2010 Colombia explained that Decree 1030 of 2010 established that the responsibilities of the DAS Protection Program "w[ould] be gradually reduced," as the different stages of the process of transferring the respective protection schemes were completed. The State insisted that "it w[ould] never withdraw the protection schemes granted to the beneficiaries of provisional measures without prior notice." It explained that it would not leave unprotected all those beneficiaries who, upon expiry of the DAS contract, had a protection scheme assigned to them by that entity, "because the State's obligation does not end and is not interrupted by that circumstance." On that occasion, Colombia stated that, "the [protection] scheme for Islena Rey would not be withdrawn before June 30, 2010," and that this had been explained to the beneficiary at a monitoring and coordination meeting held on May 26, 2010.

9. Regarding the protective measures implemented in favor of the beneficiary, Islena Rey, the representatives indicated that, on December 11, 2009, she had asked the Ministry of the Interior and Justice, the entity responsible for the Protection Program, to replace one of her escorts, because he had "acted in a manner contrary to the beneficiary's protection," and she had therefore lost confidence in this escort. They explained that the said acts consisted in the "transmittal by the escort of personal information and information on the activities carried out by the [beneficiary] Islena Rey, [...] at the express request of the Head of Protection of the Meta Branch of the DAS." The representatives noted that, despite this request, the escort continued providing his services until March 2010. They underscored that this situation had occurred previously during implementation of the protective measures, and they had denounced repeatedly that escorts assigned to the protection of the beneficiary had carried out intelligence activities. They had asked the State to provide information in this regard, but to date had not received any answer. In addition, they stressed that the beneficiary had proposed persons of trust to replace the said escort, but the DAS had "needed five (5) months to determine that the individuals proposed [...] did not meet the requirements to be hired as escorts." The representatives pointed out that this was "the second time that obstacles had been placed to the hiring of an escort of trust alleging requirements that were not communicated opportunely." They indicated that, in April 2010, the DAS had assigned a hired escort, which the beneficiary had accepted as a provisional measure until a person of trust could be assigned to her, which she repeatedly insisted on to the state authorities. In their observations of December 2010, the representatives confirmed that "since October 15, 2010," the protection scheme for the beneficiary Islena Rey has been complete once again and, currently, "all the escorts [...] satisfy the requirement of trust"; nevertheless, they regretted that 10 months had elapsed from the time the change in escort was requested until the State complied with this obligation, "undertaking to ensure the satisfactory functioning of the physical protection scheme and, consequently, [to the protection] of the life and integrity of the [beneficiary]." They underlined that, during the time the beneficiary's protection scheme was incomplete, the Ministry of the Interior and Justice and the DAS had "provided numerous different answers" about the competence to define the requirements for contracting out the escorts.

10. Regarding the armored vehicle that forms part of the beneficiary's security scheme, the representatives mentioned that it had needed many repairs during 2010 and that, each time, "the vehicle has been replaced by a similar one." However, they emphasized the

absence of a clear procedure to ensure her security when the vehicle experienced mechanical failures, and also for the movements of the beneficiary, who, at times, has had to risk travelling around rural areas without her vehicle.⁶ In their observations of February 16, 2011, the representatives indicated that the delivery of vouchers for smaller amounts (*supra* sixth considering paragraph) had been a “satisfactory” response by the State to one of the concerns of the beneficiary Islena Rey as regards the provision of fuel for the vehicle that forms part of her protection scheme. However, they underscored that they have not received an answer from the State regarding the beneficiary’s remarks at the meeting held with the state authorities on October 7, 2010, when she expressed her concern with regard to the petrol station with which this supply of fuel had been contracted, because the fact that the contract is exclusively with this station meant that, at times, when the beneficiary had to travel to rural areas, she had to take additional fuel in gallon tanks inside the vehicle, which “ran the risk of an explosion for all those who travelled in the vehicle.”

11. As to the protective measures for the Committee’s offices, the representatives indicated that they had requested the Ministry of the Interior and Justice to ensure that the risk assessment of the office be carried out by national police officers in civilian clothing, and to schedule the assessment on a date on which those responsible for making the assessment could introduce themselves to the beneficiary and provide her with clear information on the procedure. However, they advised that “to date” they had not received any answer to these requests. They considered that this “reveals the delays with which the State responds to a situation of risk” and they expressed their concern about the possible repetition of incidents such as those that took place on August 15, 2010 (*infra* fourteenth considering paragraph), given that insufficient measures of protection have been taken based on the evidence of the risk to the said organization’s office. Subsequently, in their observations of February 16, 2011, they asked that the State provide “a satisfactory explanation [...] of the measures that can be adopted to protect the office.”

12. The representatives also referred to the uncertainty that has arisen with regard to the administration of the protection scheme in favor of the beneficiary Islena Rey, principally in their observations of August 25 and December 23, 2010. They explained that Colombia had not provided them with “complete information regarding the alternatives for administering the protection schemes”; therefore, uncertainty persists about the continuation of the DAS and its competence to administer protection schemes. Regarding the possibility that the protection scheme be administered by a private company, they listed a series of observations regarding the contract between the Ministry of the Interior and Justice and the private security company that could take over the administration of the protection programs, which had been communicated to the State; however, they mentioned that the latter “has responded partially to the concerns.” In this regard, they formulated a series of specific questions and asked the State to answer them precisely.⁷ In general, they stated that they considered that the “provision of the [protection] scheme by a private

⁶ In this regard, they specified that, in July 2010, the beneficiary informed the State that she required the entire scheme in order to travel to several municipalities of Meta to carry out human rights dissemination activities; however, not only was “[the said] request ignored,” but the DAS “informed the National Police and the National Army that she [would] travel to the said places on those dates, noting that she would not be protected by her escort.” They indicated that, even though the law enforcement units called the beneficiary on several occasions to find out if she was all right, that does not constitute a measure of protection coordinated with the beneficiary and “does not correspond to the extraordinary risk of the [human rights] defender.”

⁷ These questions correspond, *inter alia*, to concerns regarding the following issues: the “extreme care” established for escorting a person whose risk is extraordinary; the complaints and observations system as regards failures in the protection scheme; the responsibility of the Ministry of the Interior and Justice in responding to the said complaints; the “essential controls” established for hiring escorts; the State’s verification and support for training and re-training; the procedures for supervising contracts, and the beneficiary’s possibility of participating in the evaluation of the operation of the protection scheme administered by a private company.

company does not include the controls required to guarantee the satisfactory functioning of the measures of protection." As to the option that the protection scheme be transferred to the National Police, they indicated that, in the absence of sufficient information, they could not give an opinion. They also recalled the undertaking made by the State at the public hearing held on this matter on January 29, 2010, according to which Colombia would implement mechanisms to monitor the security schemes with the participation of the beneficiaries and the Attorney General's Office, and they indicated that they were unaware of any measures that may have been adopted in this regard.

13. For its part, the Inter-American Commission noted that, in its reports, the State had not addressed certain aspects of the security scheme to which the representatives had referred in their observations. In addition, it observed that, despite "having repeatedly asked [the State] for specific information on the DAS 'intelligence strategy,'" the State had still not presented information in that regard. In its observations of February 15, 2011, it observed that the State had not submitted information on the "current measures to protect the office of the Civic Committee of Meta."

a.2 Regarding the situation of risk of the beneficiary Islena Rey

14. The representatives advised that, on August 15, 2010, the office of the Civic Committee of Meta had been robbed in the early morning hours. They stated that the "authors of this act completely destroyed the main door of the office, searched the offices of the professionals and of Islena Rey," and went through the Committee's files, which contained information on cases and situations that the organization was monitoring. They added that the authors took video, audio, photographic and projection equipment with information on activities to disseminate human rights in rural communities, but "did not steal or take the computers or the money kept in the office." They also reported that, following the robbery, the officers assigned by the National Police to guard the premises had accessed the Committee's computers without authorization, and consequently "they had had access to electronic files with information on cases of human rights violations." In this regard, the representatives indicated that, although they are unaware of the interest or motive of the said officers, "they fear that these abuses [...] may be linked to the harassment [and attack on the office] of the Civic Committee of Meta." They advised that the Civic Committee and its President, the beneficiary Islena Rey, had informed the Prosecutor General's Office and the public in general that the attack on the office and the theft of equipment were clearly related to their work as human rights defenders. Moreover, regarding this incident, the representatives indicated that the authorities had been informed immediately and that a complaint had been filed owing to the conduct of the police officers assigned to guard the office. They also underscored that they hoped that the investigation would be conducted promptly and that they would be informed of the results. Subsequently, in their observations of February 16, 2011, they indicated that they had no information on any progress in the investigation undertaken by the Internal Control Office of the National Police.

15. The representatives also indicated that the context of the armed conflict in the department of Meta continues to be an element of risk. In particular, they referred to the presence of paramilitary groups, "composed of individuals who demobilized in 2007, including one group known as the *Ejercito Revolucionario Popular Anticomunista* [People's Anti-Communist Revolutionary Army of Colombia] (ERPAC)," as well as support for the paramilitary group by state agents, "specifically, the National Army and the [...] DAS." In this regard, they emphasized that the beneficiary Islena Rey had alerted the authorities to the "infiltration of paramilitary groups in the DAS," as well as the participation of paramilitary groups in situations of risk where she had been a victim, such as the attack of

October 17, 2009.⁸ They underscored that the rural communities had also indicated that the paramilitary group was responsible for the said attack, even though the State has attributed responsibility to the FARC.

16. In addition, the representatives advised that the beneficiary had also suffered harassment by state agents. In particular, they mentioned two occasions on which she, and the vehicle that was part of her security scheme, had been detained and searched by the National Police.⁹ They indicated that, on both occasions, the Meta Chief of Police and the person responsible for human rights of the said entity had to intervene to enable them to continue on their way and to end the harassment. The representatives considered that the recent facts, together with the "difficult context" in which the Committee carries out its activities, "added to the serious irregularities in the protection granted by the State, are sufficient reasons to affirm that the current situation continues to be of extreme gravity and urgency." Also, in their observations of February 16, 2011, the representatives added that the beneficiary Islena Rey had recently been summoned by the National Army on several occasions to testify in a case of an alleged forced disappearance, even though the military tribunals do not have jurisdiction for this type of crime; consequently, they asked whether this type of summons and the application of the military criminal justice system were admissible.

17. Regarding the incident that took place on August 15, 2010, at the office of the Civic Committee of Meta, in October 2010 the State indicated that "[w]hen the alleged theft took place [at the said office], it was arranged that the police would provide security to the building." In addition, it indicated that the District Commander and the Head of the Judicial Police of the department had been ordered to send patrols to interview Islena Rey and to determine the condition of the office. It added that a National Police patrol car accompanied the beneficiary to the Rapid Reaction Unit so that she could file the corresponding complaint. Based on the foregoing, Colombia emphasized that it had "acted with the urgency that the case called for." It explained that, based on the beneficiary's request, a police unit had been placed outside the building where the Committee is located while the door was being repaired. Regarding the representatives' allegations that police officers had allegedly turned on some of the organization's computers and accessed the Committee's web pages and files, the State indicated that Islena Rey had filed a report before the Secretariat of the Police Committee to Receive, Handle, Evaluate and Process Complaints (CRAET); this "was processed by the Disciplinary Control Office" which ordered that the corresponding investigations be opened. Colombia emphasized that, despite the problems related to the "alleged conduct of some police officers," both the Criminal Investigation Unit and the Human Rights Unit of the Police had been "very willing to provide support and collaboration to Islena Rey, and the security and escort she required." Subsequently, in its report of December 2010, the State added that the 27th Local Prosecutor's Office of the

⁸ Cf. *Matter of Giraldo Cardona et al.* Provisional measures with regard to Colombia. Order of the Court of February 2, 2010, sixth to tenth considering paragraphs.

⁹ In a communication of November 20, 2010, addressed to the Meta Chief of Police, submitted as an attachment to the representatives' communication of December 13, 2010, the beneficiary Islena Rey stated that, on November 17, 2010, when two of her escorts got out the vehicle assigned for her protection, two police officers approached them, demanding that one of the escorts hand over his official weapon. The beneficiary indicated that, although the police were shown the identification documents and the permit to carry a weapon, one of the police officers insisted that the weapon was being carried illegally, and even "arbitrarily searched [her] daughter's bag, [because], according to him, it contained concealed weapons." She indicated that the police officers did not allow them to continue on their way home, until a sergeant arrived and "offered apologies on behalf of the institution." Lastly, she emphasized that, when she asked the police officer who had detained them about his "abusive and disrespectful" attitude, the officer said that he had followed the appropriate "procedure" and therefore had nothing to explain. Based on the above, the beneficiary asked the Meta Police Chief to inform her whether the police officer "was obeying an order from his superiors."

Villavicencio Support Structure was conducting the investigation and described some measures it had taken in this regard. It indicated that "there have been some problems" with the investigation, because there were no witnesses to the incident, no surveillance service in the building or security cameras in the sector, and therefore the investigation file had been forwarded to the assignment office so that a prosecutor could be appointed before the specialized judges, in view of the victim's condition as a beneficiary of provisional measures.

18. Regarding the facts denounced by the representatives, the Commission considered that "the effective investigation of the facts was of utmost importance," especially the complaint filed against the agents in charge of guarding the office of the Civic Committee following the events of August 2010, "which related to alleged activities of state agents that could impair the effectiveness of the protective measures."

a.3 Considerations of the Court with regard to the situation and the measures of protection adopted in favor of the beneficiary Islaena Rey

19. Bearing in mind the information provided by the State and the representatives, the Court observes that, for most of 2010, there were problems in the provision of the security service and, as a result, the protection scheme was incomplete (*supra* sixth and ninth considering paragraphs). However, it notes that the said problems were finally overcome in October 2010, when the escort of trust, proposed by the beneficiary, was hired. The Court assesses positively the efforts made by the state authorities in this regard. Nevertheless, it notes that the escort of trust who was finally hired in October 2010 is the same person who had been proposed originally by the beneficiary in December 2009, when she first asked the authorities to replace the escort (*supra* ninth considering paragraph). In this regard, it takes note of the information provided by the representatives concerning the uncertainty and confusion as regards who should make the decision about hiring the said escort, and about the requirements that the latter must satisfy (*supra* ninth considering paragraph). The Court underscores the need for the state authorities to establish clear and direct means of communication with the beneficiaries, which create the trust required for their adequate protection.¹⁰ It also highlights that it is essential that the State and the representatives coordinate the implementation of the provisional measures in the instant case, which supposes that all the parties must propose and agree on the measures, if any of them considers that the existing ones are inadequate.¹¹

20. In addition, the Court takes note of the information provided by the State regarding the risk assessment of the Civic Committee's office to determine the need and possibility of implementing security measures in the said building (*supra* seventh considering paragraph). In this regard, it observes that the State pointed out that it would not be possible to "shield" the said office because the Civic Committee did not own the building. Furthermore, it notes the information provided by the representatives in December 2010, that "to date" the state authorities had not contacted the beneficiary regarding preparation of the said assessment, even though they had asked the Ministry of Interior and Justice, among other matters, to inform them about it in advance, owing to the situation of risk of the organization's President, the beneficiary Islaena Rey (*supra* eleventh considering paragraph). With regard to the protection required by the beneficiary Islaena Rey, the Court deems pertinent that, in

¹⁰ Cf. *Matter of Mery Naranjo et al.* Provisional measures with regard to Colombia. Order of the Court of November 25, 2010, twenty-eighth considering paragraph.

¹¹ Cf. *Matter of Mery Naranjo et al.* Provisional measures with regard to Colombia. Order of the Court of January 31, 2008, twelfth considering paragraph, and *Matter of Mery Naranjo et al.*, *supra* note 10, twenty-eighth considering paragraph.

its next report on the implementation of these measures, the State refer to the status of the execution of the said risk assessment of the organization's office, and also to any possible measures it might adopt in this regard. Moreover, the Court urges the beneficiary and her representatives to provide the state authorities with the necessary and reasonable collaboration and cooperation for the conduct of this assessment.

21. Regarding the changes in the administration of the beneficiary's protection scheme, the Court recalls that it had asked the representatives to present their observations on "the proposals and arguments presented by the State in relation to the new security scheme [...] and, should they not accept the said proposals, to present an option."¹² The Court takes note of the observations and concerns expressed by the representatives in their communications of August 25 and December 23, 2010 (*supra* twelfth considering paragraph), as well as the information provided by the State in its brief of June 1, 2010 (*supra* eighth considering paragraph). Furthermore, it reiterates to the State that the measures of protection and security adopted for the implementation of the provisional measures must be agreed on with the beneficiaries and their representatives and, to this end, it must design mechanisms that allow them to participate in the planning and implementation of such measures, as well as keep them informed on any progress or changes in their execution.

22. The Court recalls that the mere adoption of certain measures of protection by the State is not sufficient; rather such measures and their implementation must be effective so as to end the risk to the individuals they are intended to protect.¹³ Therefore, it recalls that the State must take the necessary measures to ensure that the provisional measures required in this Order are planned and implemented with the participation and agreement of the beneficiaries of the measures or their representatives, so that said measures are provided diligently. The Court observes that several of the problems that occurred in the implementation of these measures were related to the lack of communication between the authorities and the beneficiary or her representatives, as well as the failure to advise the latter of the appropriate means, and the mechanisms and norms applicable to the implementation of the security scheme ordered for the beneficiary. Therefore, the Court requests the State to keep the beneficiaries and their representatives informed about the execution of and progress in complying with these measures; to establish and maintain a suitable and effective means of communication with the beneficiary or her representatives, and to provide a prompt answer to the beneficiary's concerns in relation to the operation of her security scheme.

23. In addition, the Court takes note of what happened on August 15, 2010, at the office of the Civic Committee of Meta, an incident that reveals a situation of risk for the beneficiary, who is the President of the Committee. The Court assesses positively that the state authorities responded to this incident immediately, and that the Prosecutor's Office has opened an investigation into it. Also, it notes the representatives' allegations regarding the conduct of the police officers assigned to guard the office of the said organization and that, consequently, a disciplinary procedure would be followed against the said officers (*supra* fourteenth and seventeenth considering paragraphs).

¹² Cf. *Matter of Giraldo Cardona et al.*, *supra* note 8, twenty-fifth considering paragraph.

¹³ Cf. *Matter of Juan Almonte Herrera et al.* Provisional measures with regard to Dominican Republic. Order of the President of the Court of March 24, 2010, sixteenth considering paragraph; *Matter of Mery Naranjo et al.*, *supra* note 10, twenty-seventh considering paragraph, and *Matter of Alvarado Reyes et al.* Provisional measures with regard to Mexico. Order of the Court of November 26, 2010, twenty-sixth considering paragraph.

24. Based on the above, the Court considers that a situation of extreme gravity and urgency persists that could cause irreparable damage to the life and physical integrity of the beneficiary Islena Rey, which justifies maintaining provisional measures in her favor. In consequence, the Court requires the State to maintain and, if appropriate, adopt all necessary measures to protect the life and physical integrity of the said beneficiary, so that they are effective and implemented diligently.

a.4 Regarding the measures of protection and situation of the beneficiaries Mariela Duarte, widow of Giraldo, and her daughters, Sara and Natalia Giraldo

25. The State reported that there are "surveillance patrols [...] and Dignitary Protection personnel [who] constantly patrol the place of residence of Mrs. Duarte de Giraldo." In addition, it indicated that the area Police had provided Mrs. Duarte de Giraldo with a list of telephone numbers of the heads of the department's Police Units, "so that she could communicate any irregularity in relation to her security or that of her daughters." It added that "it had reinforced [the security of Mrs. Duarte de Giraldo] with the patrols and the appointment of a liaison officer and assistant in order to maintain better contact with [her]," and had told her that she should implement measures of security and self-protection to ensure her personal security in her daily activities and the security of her household. Lastly, it advised that, on November 20, 2009, support for the provisional relocation of the beneficiary had been approved, and that, on January 20, 2010, "Avantel" communication equipment had also been approved.

26. The representatives indicated that Mrs. Mariela Duarte did not want a protection scheme consisting of armed escorts; therefore the State had undertaken to implement different protective measures and it was agreed that the "National Police would patrol the residence of the Giraldo Duarte family." In this regard, they stated that the beneficiary had advised that the "patrols were being carried out regularly and [...] no incidents had taken place that jeopardized her security in the city of Villavicencio."

27. The Commission, while noting that it did not have the observations of the representatives when making its own observations, repeated that it had no information regarding the regularity of the patrols conducted in favor of the beneficiaries, the places that were patrolled, or the effectiveness of these measures of protection. In addition, in its observations of February 15, 2011, the Commission indicated that neither the representatives nor the State had referred to the situation of these beneficiaries in their latest communications to the Court.

28. The Court recalls that, in its Order of February 2, 2010, it had asked the parties for "information on the persistence of the situation of 'extreme gravity and urgency' that gave rise to [the] adoption [of provisional measures] in favor of Mariela Duarte de Giraldo and her daughters," so as to be able to assess "the pertinence of maintaining these measures." In this regard, it observes that neither the State nor the representatives forwarded information on the situation of risk of these beneficiaries, beyond the representatives' assertion that the beneficiary Mariela Duarte de Giraldo was satisfied with the police patrols that were carried out to protect her and her daughters, and that "no incident jeopardizing her security" had occurred.

29. In this regard, the Court considers that the information forwarded by the parties is insufficient to determine the situation of extreme gravity and urgency that the beneficiaries may be facing. However, it notes that the State has not objected to maintaining the measures granted them, and therefore considers it desirable to maintain the provisional measures in their favor on this occasion. Nevertheless, the Court reiterates the request

made in its last Order concerning this matter, and requires that the State and the representatives, in their next communications to the Court: (i) present detailed and complete information on the persistence of the situation of extreme gravity and urgency to the detriment of Mariela Duarte de Giraldo, Sara Giraldo and Natalia Giraldo that could cause irreparable damage to their rights, and (ii) refer expressly to the need to maintain these measures in favor of the said beneficiaries.

B. Regarding the organization of an act to relaunch the Civic Human Rights Committee of Meta

30. Regarding the relaunching of the Civic Committee of Meta, in its report of June 1, 2010, the State advised that, on February 18, 2010, it had offered the beneficiary Islena Rey to organize the act on February 26 that year, but the said beneficiary had stated that "due to the short notice given, it would be better to postpone the act and agree on a new date." Based on the foregoing, the State asked the beneficiaries to propose three possible dates, "specifying that they should be before July 31, 2010," owing to the electoral process that would lead to a change of Government in August. Subsequently, with regard to the representatives' proposal, Colombia indicated that, "owing to the current political situation, it was not possible to make a commitment on the new Government's agenda on October 13." The State emphasized that it understood the significance of organizing the act on that date, which was the anniversary of Mr. Giraldo Cardona's death, but that it was not possible to do so, "since the new Government was in the process of taking office." However, it underscored that this "was not an obstacle to organizing the launch on another date," and expressed "its willingness to reach an agreement with the beneficiaries" to that end.

31. For their part, in a communication of February 25, 2010, the representatives advised that, on June 4, 2010, they had proposed to the State that the act be carried out on October 13 that year, the date on which the fourteenth anniversary of the murder of Josué Giraldo Cardona was being commemorated, and had indicated "the conditions [they] consider[ed] necessary for the relaunch [...] to comply with the objective of being a measure of protection for [the] members [of the Civic Committee] and of safeguard for their work." Subsequently, in their observations of December 23, 2010, they indicated that it had been very difficult to set a date on which the people who would participate were available, so that they would forward some proposed dates opportunely. They said they hoped that the problems that had arisen would be overcome in 2011.

32. The Commission reiterated that the obligation to relaunch the Civic Committee of Meta "has been pending compliance for several years" and indicated that it hoped the respective obstacles could be overcome "with the guarantees of security required for its operation, as soon as possible."

33. The Court takes note of the information provided regarding compliance with this measure and underlines the willingness expressed by the parties to reach agreement. However, given that several years have elapsed since its execution was requested, the Court urges the beneficiaries, their representatives, and the State to overcome the obstacles that have impeded the relaunching of the Civic Committee of Meta to date, so that they reach final agreement this year. The Court awaits information from the parties in this regard.

C. Regarding the participation of the beneficiaries in the implementation of the measures

34. In its reports the State provided information on three meetings to monitor and coordinate these provisional measures held on May 26, August 26 and October 7, 2010, in which the beneficiaries and their representatives took part, and also the different state entities. The purpose of the meetings was to analyze the situation of the beneficiaries and the operation of their protection scheme, as well as to listen to their concerns in order "to continue advancing in the process of coordinating the measures." Colombia indicated that, during these meetings, the state entities "made different commitments to guarantee the security of the beneficiar[ies]."

35. The representatives indicated that, during the second half of 2010, they had held several coordination meetings with the State, based on which they also stated that they hoped that "the situation experienced during the first months [of that] year, where the petitioners and the beneficiary file[d] several requests to hold meetings [with the state authorities] that were not answered, would not be repeated."¹⁴ In addition, they advised that a monitoring and coordination meeting was still pending with "local and departmental authorities" at the office of the Civic Committee of Meta, to address the organization's situation and to adopt measures to guarantee the continuation of its work in the region. They indicated that the State had undertaken to hold this meeting and that they would advise the date.

36. The Commission assessed the meetings held between the parties positively.

37. The Court assesses positively the monitoring and coordination meetings on this matter held by the parties. The Court reiterates that holding periodic meetings with the representatives of the beneficiaries tends to guarantee their participation in the planning and implementation of the measures of protection ordered in their favor.¹⁵ Furthermore, taking into account the preceding findings concerning the problems that occurred up until October 2010 as regards the implementation of the measures in favor of beneficiary Islena Rey (*supra* nineteenth considering paragraph), it underlines the importance of such meetings or other forms of communication between the state authorities and the beneficiaries to ensure effectiveness in the planning and implementation of the protective measures. Therefore, the Court urges the State to take all pertinent measures to keep the beneficiaries or their representatives informed of any progress in the measures ordered by the Court and to facilitate their collaboration in the planning and implementation of the measures.

D. Regarding the investigations into the facts related to these provisional measures

38. In addition, the representatives referred to the absence of information on any progress made in the investigations into the facts related to these measures. They indicated that "the absence of an effective investigation has resulted in the fact that, 14 years after the murder of Josué Giraldo, [...] there is still no clear answer as to who killed him and who gave the order to end [his] life [...] and the organization[; and that the situation of] impunity existing in the investigation into these facts prevents the victims [...] from knowing

¹⁴ In this regard, the representatives forwarded with their communications of May 4 and 10, 2010, copies of three letters dated March 5, April 29 and May 4, 2010, addressed by the representatives to the Director of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs, as well as a letter of May 7, 2010, addressed by beneficiary Islena Rey to the same Director, requesting her to organize monitoring and coordination meetings with the pertinent state authorities. According to the representatives, these communications were not answered until the meeting held on May 26, 2010.

¹⁵ Cf. *Matter of Giraldo Cardona et al.*, *supra* note 8, twenty-ninth considering paragraph.

whether those who ordered the destruction of a human rights organization in the department of Meta 14 years ago are today, and during all these years, those who continue threatening the life and integrity of the members of the Civic Committee of Meta and, especially, its president, Islena Rey Rodriguez.” In addition, they stated that the facts surrounding the attacks against the Civic Committee of Meta and its members “have not been investigated in order to determine who were responsible and the reasons for these attacks.”

39. With the exception of the observations included in the forty-fifth considering paragraph 40 *infra*, the State did not refer in its reports to the investigations into the facts related to this matter.

40. The Commission observed that, despite having been requested on repeated occasions to forward specific information on the current status of the investigations, the State has still not presented information in this regard. In its observations of February 2011, it underscored that Colombia had not forwarded information on the state’s actions regarding the investigation of “the DAS intelligence strategy” referred to by the representatives.

41. Regarding the allegations relating to the investigations conducted by the State within the framework of these provisional measures, particularly as regards the alleged absence of results on the part of the State, the Court considers it pertinent to clarify that, previously, during the processing of these measures, it had adopted the criterion of requesting the State to investigate the facts that had given rise to the provisional measures and to inform the Court in that regard. Subsequently, in its Order of February 2, 2010, the Court established that the effectiveness of the investigations and procedures relating to the facts that gave rise to the provisional measures corresponded to the examination of the merits of the case.¹⁶ Taking into account the characteristics of these provisional measures, that a case at the admissibility and merits stage is being examined by the Commission in relation to the facts surrounding the measures (*supra* fifth considering paragraph), and the fact that the measures have been in place for approximately 14 years, the Court considers that the issue of the investigations entails an analysis of the merits that goes beyond the scope of the provisional measures.

42. Furthermore, the Court reiterates that Article 1(1) of the Convention establishes the general obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure the free and full exercise of those rights and freedoms to all persons subject to their jurisdiction. In consequence, regardless of the existence of specific provisional measures, the State is obliged to guarantee the rights of individuals in a situation of risk and must expedite the investigations required to elucidate the facts, followed by the consequences established by the pertinent laws.¹⁷

43. Based on the foregoing, within the framework of these provisional measures and as it has in other matters,¹⁸ the Court will not refer to the investigation into the facts or the

¹⁶ Cf. *Matter of Giraldo Cardona et al.*, *supra* note 8, thirty-fourth considering paragraph.

¹⁷ Cf. *Case of Velásquez Rodríguez*. Provisional measures with regard to Honduras. Order of the Court of January 15, 1988, third considering paragraph; *Matter of Eloisa Barrios et al.* Provisional measures with regard to Venezuela. Order of the Court of November 25, 2010, twenty-fourth considering paragraph, and *Matter of Mery Naranjo et al.*, *supra* note 10, seventy-eighth considering paragraph.

¹⁸ Cf. *Matter of the Children and Adolescents deprived of liberty in the FEBEM “Tatuapé Complex.”* Provisional measures with regard to Brazil. Order of the Court of July 3, 2007, seventh operative paragraph; *Matter of the Peace Community of San José de Apartadó*. Provisional measures with regard to Colombia. Order of the Court of August 30, 2010, thirtieth considering paragraph, and *Matter of Mery Naranjo et al.*, *supra* note 10, seventy-ninth considering paragraph.

way in which the State is conducting the investigation. In this regard, the Court reiterates that it will not ask the parties to provide information on this aspect again. However, this does not relieve the State of its obligation to investigate the reported facts that gave rise to these measures, in the terms of Article 1(1) of the American Convention.

44. Despite the above, the Court recalls that, during the public hearing held on January 29, 2010, in this matter, the State "made an undertaking before the Court" "to address an official note to the Justice and Peace Unit for the Justice and Peace group to take charge of investigating the facts in which the members of the self-defense groups that operated in the zone of Meta were involved, and specifically asking them about their possible participation in these facts."¹⁹ As a result of this, in its Order of February 2, 2010, the Court asked the State to provide information on this undertaking.²⁰

45. In this regard, the State advised that the National Justice and Peace Unit of the Prosecutor General's Office had determined that "to date" none of the candidates for Law 975 of 2005 "had mentioned the murder of Josué Giraldo Cardona."

46. The representatives indicated that the information provided by the State "surprised" them, because "at least one of the leaders of the paramilitary groups who were in the region of the Llanos Orientales was providing information by way of unsworn statements (*versiones libres*) and his assertions included [...] the murder of members of the Patriotic Union and other leftist leaders." They recalled that "while taking unsworn statements, prosecutors may ask questions about specific facts," and that an effective investigation should include all the activities destined to shed light on the facts. They considered that the State "has not taken the necessary measures to elucidate the facts and punish those responsible, despite having information about the possible participation of paramilitaries in the violations perpetrated against the members of the Civic Human Rights Committee of Meta and being able to question at least one demobilized paramilitary leader.

47. The Court takes note of the information provided by the State, and also the observations of the representatives on this issue. Bearing in mind the terms of the undertaking made by Colombia, the Court asks it to advise the Court whether it has indeed requested the Justice and Peace Unit of the Prosecutor General's Office to take charge of the investigation into the events that occurred in the zone of Meta, and to ask those who appear before it questions specifically about the facts related to these measures.

THEREFORE

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority granted by Article 63(2) of the American Convention on Human Rights and Articles 27 and 31 of the Court's Rules of Procedure,²¹

DECIDES:

¹⁹ *Matter of Giraldo Cardona et al.*, *supra* note 8, thirtieth and thirty-fourth considering paragraphs.

²⁰ *Cf. Matter of Giraldo Cardona et al.*, *supra* note 8, second operative paragraph.

²¹ Rules of Procedure of the Court approved at its eighty-fifth regular session, held from November 16 to 28, 2009.

1. To require the State to maintain and to adopt all necessary measures to continue protecting the life and physical integrity of Islena Rey and Mariela de Giraldo and the latter's two daughters, Sara and Natalia Giraldo.
2. To require the State to provide information on the undertaking made before this Court to officially ask the Justice and Peace Unit, responsible for investigating incidents relating to the zone of Meta, to specifically question those who appear before it about the facts related to this matter.
3. To request the State to submit to the Inter-American Court of Human rights, by June 1, 2011, at the latest, a detailed and thorough report indicating the measures it has adopted to comply with the provisions of the first operative paragraph of this Order, as well as the information required in considering paragraphs 21, 23, 31, 35 and 42 hereof.
4. To request the representatives of the beneficiaries to present their observations on the State's report indicated in the preceding operative paragraph within four weeks of receiving it, together with the information requested in considering paragraphs 29 and 33 hereof.
5. To request the Inter-American Commission on Human Rights to present its observations on the State's report indicated in the third operative paragraph of this Order within six weeks of receiving it.
6. To reiterate to the State that it must allow the beneficiaries of these measures to take part in the planning and implementation of the measures and, in general, keep them informed of any progress in the execution of the measures.
7. To reiterate to the State that it should continue reporting on the provisional measures adopted, every two months, and to require the representatives of the beneficiaries and the Inter-American Commission on Human Rights to submit their observations within four and six weeks, respectively, of notification of the said State reports.
8. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights, and the representatives of the beneficiaries.

Diego García-Sayán
President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary