

**Order of the
Inter-American Court of Human Rights
of November 27, 2007
Provisional Measures regarding Colombia
Case of Gutiérrez Soler**

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter, "the Court"), "the Inter-American Court" or "the Tribunal") of March 11, 2005, whereby the State of Colombia (hereinafter, "the State"), was required *inter alia* to adopt any measures necessary to: a) protect the life, personal integrity and liberty of Mr. Ricardo Gutiérrez-Soler and his family, namely: his mother, Mrs. María Elena Soler de Gutiérrez; his sons and daughters, Luisa Fernanda Gutiérrez-Reyes, Paula Camila Gutiérrez-Reyes, Leonardo Gutiérrez-Rubiano, Leydi Caterin Gutiérrez-Peña, Sulma Tatiana Gutiérrez-Rubiano, Ricardo Alberto Gutiérrez-Rubiano and Carlos Andrés Gutiérrez-Rubiano; and Mrs. Yaqueline Reyes; and b) protect the life, personal integrity and liberty of Mr. Wilson Gutiérrez-Soler and his son, Kevin Daniel Gutiérrez-Niño, should they decide to return to Colombia."

2. The Judgment on the merits, reparations, and costs rendered by the Inter-American Court on September 12, 2005, on the instant case, whereby the Court found that the "State must exercise special care to safeguard the life, integrity and safety of Messrs. Wilson and Ricardo Gutiérrez-Soler and of their next of kin, and must afford them the necessary protection from any persons, bearing in mind the events of the instant case and in accordance with the protective measures Order made by this Court on March 11, 2005" (*Operative Paragraph No. 10 of the Judgment on the merits, reparations, and costs of September 12, 2005*).

3. The reports of August 31 and November 11, 2005, March 23, August 11 and September 15, 2006, and February 14 and September 11, 2007, whereby the State commented on the provisional measures adopted.

4. The briefs of September 27, 2005, January 2, 2006, and January 2, May 1 and October 24, 2007, whereby the representatives of the beneficiaries (hereinafter, "the representatives") filed their observations about the reports of the State to follow-up the provisional measures (*supra* Having Seen clause No. 3).

5. The briefs of September 29 and December 21, 2005, January 10, May 1, October 6 and November 12, 2006, and March 30, 2007, whereby the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission"), filed its observations about the reports submitted by the State (*supra* Having Seen clause No. 3).

WHEREAS,

1. Colombia is a State Party to the American Convention on Human Rights (hereinafter, "the American Convention") since July 31, 1973, and recognized the contentious jurisdiction of the Court on June 21, 1985.
2. Article 63(2) of the American Convention provides that "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration."
3. Article 25(1) of the Rules of Procedure of the Court provides that "[a]t 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."
4. In particular, as held by the Court, the State has a duty to adopt security measures to protect all persons subject to its jurisdiction and this duty is even stronger regarding those who take part in proceedings before the entities in charge of supervising the enforcement of the American Convention.
5. International Human Rights Law provides that urgent provisional measures are also aimed at protecting fundamental human rights, avoiding irreparable damage to individuals.
6. To effectively guarantee the rights enshrined in the American Convention, a State Party has a duty, *erga omnes*, to protect all people subject to its jurisdiction.

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7. The representative informed that Messrs. Ricardo Gutiérrez-Soler, Yaqueline Reyes, Leonardo Gutiérrez-Rubiano, Ricardo Gutiérrez-Rubiano, Sulma Tatiana Gutiérrez-Rubiano, Paula Camila Gutiérrez-Reyes and Luisa Fernanda Gutiérrez-Reyes "were forced to leave the country [...] given the difficult safety circumstances they were undergoing and the lack of an overall protection strategy by the State". According to the representatives, the reasons for such decision are consistent with the arguments submitted by the Court in the observations to follow-up provisional measures, consisting in the lack of a comprehensive prevention and protection policy; failure to honor the commitments made by the State under follow-up measures; failure to identify the people liable for the aggressions; the occurrence of new and permanent harassment events without any necessary measures to prevent them; ignorance of the group of beneficiaries for provisional measures and denial of protection measures for some relatives.

8. The State requested the Court to rescind the provisional measures on the grounds that "Mr. Ricardo Gutiérrez-Soler and his family are residing abroad, thus hindering the implementation of such measures." In that regard, both the Commission and the representatives stated that "the measures should be implemented if they return to Colombia," since there is the possibility that "part of or the entire family may return to Colombia". Moreover, they requested to keep the provisional measures in force regarding the beneficiaries who continue residing in Colombia, namely: María Elena Soler de

Gutiérrez, Carlos Andrés Gutiérrez-Rubiano and Leydi Caterin Gutiérrez-Peña.

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9. Operative Paragraph No. 10 of the Judgment on the merits, reparations, and costs rendered on September 12, 2005, in the Case of Gutiérrez-Soler (*supra* Having Seen clause No. 2), the Inter-American Court held that the State must exercise special care to safeguard the life, integrity and safety of Messrs. Wilson and Ricardo Gutiérrez-Soler and of their next of kin, and must afford them the necessary protection from any persons, bearing in mind the events of the instant case and in accordance with the protective measures Order passed by this Court on March 11, 2005 (*supra* –Having Seen clause No. 1).

10. Messrs. Ricardo Gutiérrez-Soler, Yaqueline Reyes, Leonardo Gutiérrez-Rubiano, Ricardo Gutiérrez-Rubiano, Sulma Tatiana Gutiérrez-Rubiano, Paula Camila Gutiérrez-Reyes and Luisa Fernanda Gutiérrez-Reyes are currently abroad. However, based on the information provided by the parties, the facts and circumstances that justified the adoption of such provisional measures are still at stake as their lives and personal integrity would continue seriously threatened and at risk in Colombia. Pursuant to the statements of the representatives, the inefficacy of the protection strategy implemented by the State pushed the aforementioned beneficiaries to leave the country. Therefore, as set forth in the Order passed by the Court on March 11, 2005, regarding Mr. Wilson Gutiérrez-Soler and his son Kevin Daniel Gutiérrez-Niño (*supra* Having Seen clause No. 1), it is necessary to uphold these provisional measures to protect the life, personal integrity and liberty of Messrs. Ricardo Gutiérrez-Soler, Yaqueline Reyes, Leonardo Gutiérrez-Rubiano, Ricardo Gutiérrez-Rubiano, Sulma Tatiana Gutiérrez-Rubiano, Paula Camila Gutiérrez-Reyes and Luisa Fernanda Gutiérrez-Reyes, should they return to Colombia. In that regard, the aforementioned individuals must notify the State their arrival in the country so that the measures can be implemented.

11. The State should uphold the measures necessary to protect the life and integrity of María Elena Soler de Gutiérrez, Carlos Andrés Gutiérrez-Rubiano and Leydi Caterin Gutiérrez-Peña, since they continue residing in Colombia and, based on the information submitted to the Court, it is not possible to infer that they are no longer at risk or subject to circumstances of extreme gravity and urgency.

12. In its next bimonthly report, the State shall include updated and accurate information on the risks at stake and the effective protection measures adopted to the benefit of Messrs. María Elena Soler de Gutiérrez, Carlos Andrés Gutiérrez-Rubiano and Leydi Caterin Gutiérrez-Peña, in order to provide this Court with the information necessary to evaluate the implementation of these provisional measures.

13. This Court has held that safeguarding the right to life is crucial to the American Convention, as the enforcement of all other rights depends on it. If the right to life is not respected, all other rights become meaningless after their holder disappears. States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur, and in particular, the duty to prevent its agents from violating it."

14. The right to personal integrity is so relevant that it is specifically protected under the American Convention upon setting forth, *inter alia*, the prohibition against torture, cruel, inhuman and degrading treatment, and the impossibility to suspend such

guarantee during emergency situations.

15. The Court has stated that the protection of liberty safeguards “both the physical liberty of the individual and his personal safety, in a context where the absence of guarantees may result in the subversion of the rule of law.

16. As a key element of the duty of protection, the State must immediately adopt the measures necessary to: a) effectively guarantee the protection of the life and personal integrity of María Elena Soler de Gutiérrez, Carlos Andrés Gutiérrez-Rubiano and Leydi Caterin Gutiérrez-Peña; b) protect the life, personal integrity and liberty of Mr. Wilson Gutiérrez-Soler and his sons and daughters Kevin Daniel Gutiérrez-Niño, and Ricardo Gutiérrez-Soler, Yaqueline Reyes, Leonardo Gutiérrez-Rubiano, Ricardo Gutiérrez-Rubiano, Sulma Tatiana Gutiérrez-Rubiano, Paula Camila Gutiérrez-Reyes and Luisa Fernanda Gutiérrez-Reyes, should they decide to return to the country.

NOW, THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in accordance with Article 63(2) of the American Convention on Human Rights and Article 25 of the Rules of Procedure of the Court,

DECIDES,

1. To call upon the State of Colombia to adopt and uphold any measures necessary to: a) protect the life and personal integrity of María Elena Soler de Gutiérrez, Carlos Andrés Gutiérrez-Rubiano and Leydi Caterin Gutiérrez-Peña; b) protect the life, personal integrity and liberty of Mr. Wilson Gutiérrez-Soler and his sons and daughters Kevin Daniel Gutiérrez-Niño, and Ricardo Gutiérrez-Soler, Yaqueline Reyes, Leonardo Gutiérrez-Rubiano, Ricardo Gutiérrez-Rubiano, Sulma Tatiana Gutiérrez-Rubiano, Paula Camila Gutiérrez-Reyes and Luisa Fernanda Gutiérrez-Reyes, should they decide to return to the country, in accordance with Whereas clauses No. 10, 11 and 16 of this Order.

2. To call upon the State of Colombia to include in its next report an evaluation of the risks undergone by the beneficiaries María Elena Soler de Gutiérrez, Carlos Andrés Gutiérrez-Rubiano and Leydi Caterin Gutiérrez-Peña; and the measures implemented based on the prevailing circumstances pursuant to Whereas clauses No. 11 and 12 of this Order.

3. To call upon the State of Colombia to allow the beneficiaries or their representatives to participate in the planning and implementation of protection measures and, in general, to keep them posted on progress made regarding the provisional measures passed by the Inter-American Court of Human Rights.

4. To call upon the State of Colombia to continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted and to request the representatives of the beneficiaries of the provisional measures and the Inter-American Commission on Human Rights to submit their observations on the State reports within a term of four and six weeks, respectively, following notice of the

corresponding State reports.

5. To give notice of this Order to the State of Colombia, the Inter-American Commission of Human Rights and the representatives of the beneficiaries of provisional measures.

Sergio García-Ramírez
President

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Leonardo A. Franco

Margarette May-Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary