

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF FEBRUARY 7, 2006**

PROVISIONAL MEASURES REGARDING COLOMBIA

MATTER OF THE COMMUNITIES OF JIGUAMIANDÓ AND CURBARADÓ

HAVING SEEN:

1. The order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", or "the Court") of March 6, 2003.
2. The Order of the Inter-American Court of November 17, 2004, requesting the State of Colombia (hereinafter "the State" or "Colombia"), *inter alia*, to maintain the measures taken and to adopt, forthwith, such measures as may be necessary to effectively protect the life and the right to humane treatment of the members of the *Consejo Comunitario del Jiguamiandó* (Community Council of Jiguamiandó) and the families of Curbaradó (hereinafter "the Communities").
3. The Order of the Inter-American Court of March 15, 2005, urging the State to implement the provisional measures ordered by the Inter-American Court in the Orders of March 6, 2003 and November 17, 2004, in favor of the members of the *Consejo Comunitario del Jiguamiandó* (Community Council of Jiguamiandó) and the families of Curbaradó, and to adopt such other measures as may be necessary to promptly and fully comply with the requirements laid out by the Court in said Orders.
4. The communication of the State, submitted on March 15, 2005, requesting a fifteen-day extension to file the report on the provisional measures. The note of the Secretariat of the Court (hereinafter "the Secretariat") of March 30, 2005, whereby, following the instructions of the President of the Court (hereinafter "the President") and in light of the Order issued by the Court on March 15, 2005, the State was requested to include in the report to be submitted on April 21, 2005 the information required for the report that should have been submitted on February 8, 2005.
5. The brief by the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission" or "the Commission") received on April 4, 2005, to which was attached a press release issued on April 2, 2005 by several human rights organizations, including the *Comisión Intereclesial Justicia y Paz* (Interchurch

* Judge Diego García-Sayán informed the Court that, for reasons beyond his control, he would not be able to attend the deliberation and signing of this Order.

Commission), representatives of the beneficiaries of the provisional measures (hereinafter "the representatives"), reporting the alleged disappearance of Johana López, Mónica Suárez, Enrique Chimonja, Fabio Ariza and Edwin Mosquera, who were members of the *Comisión Intereclesial Justicia y Paz*, and "who [were] beneficiaries of precautionary measures" ordered by the Inter-American Commission.

6. The communication of the Secretariat of April 4, 2005, whereby, following the President's instructions, the State was required to include in the following report on provisional measures, due on April 21, 2005, detailed information regarding the alleged disappearance of the individuals named in the communication of the Commission (*supra* Having Seen clause No. 5).

7. The communication of the representatives of April 19, 2005, whereby they provided the "names of the persons who testified before the *Procuraduría Delegada para la Prevención en materia de Derechos Humanos y Asuntos Étnicos* (Delegate Attorney General's Office for the Prevention of Human Rights and Ethnic Affairs) and filed a petition for the protection of constitutional rights regarding the planting of [African] oil palm in communal property and private property and to whom the Order of the Court [of March 15, 2005] specifically referred." These persons are: Hugo de Jesús Tuberquia-Tuberquia, Andrés Borja-Romaña, Eladio Blandón-Denis, Lus Mary Cabeza-Martínez, Ligia María Chaverra-Mena, Enrique Manuel Petro-Hernández, Miguel Mariano Martínez-Cuava, Cristóbal Blandón-Borja, José del Carmen Villalba-Algumedos, Willinton Cuesta-Córdoba, Epifanio Córdoba-Borja and Erasmo Sierra-Ortiz.

8. The note of the State, received on April 22, 2005, requesting a twenty-day extension to submit the report on the provisional measures ordered in this matter. The communication of the Secretariat of April 25, 2005, whereby, following the President's instructions, the State was granted an extension until May 12, 2005 to submit the relevant report.

9. The note of the State, received on May 13, 2005, requesting another twenty-day extension to submit the report regarding the provisional measures ordered in this case. The communication of the Secretariat of May 16, 2005, whereby, following the President's instructions, the State was given an extension until May 27, 2005, which may not be further extended.

10. The note of the Secretariat of June 9, 2005, whereby, following the President's directions, the State was required to submit, as soon as possible, the report in response to operative paragraph number four of the Order issued by the Court on March 15, 2005 (*supra* Having Seen clause No.3).

11. The communication of the State, received on June 15, 2005, requesting a fifteen-day extension to submit the report regarding the provisional measures ordered in this matter. The note of the Secretariat of June 16, 2005, whereby, following the President's instructions, the State was informed that the request for extension was denied given that the period to submit said report, including the two extensions granted, expired on May 27, 2005, and was, therefore, required to submit the report as soon as possible.

12. The communication of the Secretariat of July 4, 2005, whereby, the State was notified that the period to submit the report expired on May 27, 2005, and, following the President's instructions, the State was required to submit said report as soon as

possible. The note of the Secretariat of August 4, 2005, whereby, the State was required once again to submit the report on provisional measures.

13. The brief of the State of August 8, 2005, whereby, the State submitted the report in response to the requirements laid out in operative paragraph number four of the Order issued by the Court on March 15, 2005 (*supra* Having Seen clause No. 3), stating, *inter alia*, that:

- a) the investigation into the murder of minor Hermí Garcés-Almanza and the injuries suffered by Víctor Garcés-Rentaría on February 4, 2003 was underway;
- b) the investigation into the death of Pedro Murillo was pending in the military criminal justice system, before the court associated with the 17th Army Brigade;
- c) the death of the child Ricardo Guaraona "occurred during an attack by the members of the 57th army group of the *Fuerzas Armadas Revolucionarias de Colombia* - FARC (Revolutionary Armed Forces of Colombia), and the incidents] are under investigation by the *Juzgado 30 de Instrucción Penal Militar* (30th Military Criminal Court) [...] and by the Colombian Public Prosecutor's Office."
- d) "a chart regarding the status of the criminal and disciplinary proceedings related to the Communities of Jiguamiandó and Curbaradó is" attached, detailing that twenty-eight cases were at the "preliminary stage, evidence gathering stage", two cases are at the "pre-trial investigation stage" and three at the "preliminary complaint investigation stage;"
- e) on July 15, 2005 the Ministry of the Interior informed that there were three satellite telephones, which would be delivered to the Communities once they designated a representative for such purpose;
- f) the *Red de Solidaridad Social* (Social Solidarity Network) informed the State of the implementation of the following actions, among others, in connection with the Communities: emergency humanitarian assistance in cases of displacement; supply of food; support for scheduled return; quick impact brigades; donations; production projects through a community-university-business-state alliance;
- g) on June 18, 2005 in the municipality of Turbo, Antioquia, the Colombian President reaffirmed his commitment to respect the land title of the Afro-Colombian communities;
- h) The Colombian Public Prosecutor's Office opened criminal investigations into the alleged Trespass to Areas of Special Ecological Significance by the company "URAPALMA";
- i) on November 8, 2004, the "Atrato" Joint Task Force was created in order to ensure security in the Atrato river area, from the city of Quibdó, department of Chocó, to the river mouth, and
- j) the 17th Army Brigade Unit conducted "several powerful, sustained and offensive military operations" in the area of the municipalities of Riosucio and Carmen del Darién in order to locate and neutralize the "5th, 34th and 37th squads of the [*Fuerzas Armadas Revolucionarias de Colombia* -FARC (Revolutionary Armed Forces of Colombia)] and the *grupos de Autodefensa* (Self-Defense paramilitary groups)."

14. The brief by the representatives, received on September 11, 2005, in which they included their comments on the report submitted by the State and pointed out, *inter alia*, that:

- a) the Colombian Public Prosecutor's Office submitted a list of 28 ongoing investigations, of which 16 are murder cases. Six of these cases are not related to the Communities protected by the provisional measures; in the murder cases of three-year old Ricardo Guaraona and Mr. Cristóbal Hinostriza, there is no correspondence between the crime and the alleged perpetrator; of the four investigations regarding forced displacement, only two are related to the Jiguamiandó and Curbaradó basins; and as regards the two proceedings instituted for the illegal planting of oil palm, only one is related to the Communities;
- b) the State confuses perpetrators and cases involving other population groups with the cases in which the victims are members of the Jiguamiandó and Curbaradó Communities. All cases are at a preliminary stage, which means that there is no formal investigation;
- c) as regards the investigations into the murder of the child Hermin Garces Torres and the injuries suffered by Mr. Víctor Garces Renteria, whether an arrest warrant has been issued or evidence other than testimonies has been gathered is unknown. Regarding the murder of Mr. Pedro Murillo, he would have allegedly been killed by the army, who would have shot him while totally defenseless. To date, there is no information about what the military did with his body since it was not handed over to his partner, and "[the fact that] the investigation of the case is in the hands of the military criminal justice system [...] limits [...] the right to know the truth and the right to justice;"
- d) the State has completely disregarded important aspects regarding the procedure to be followed when conducting criminal investigations, as a mechanism that prevents the repetition of irreparable damage; therefore, a commission should be created to evaluate the measures adopted by the State in relation to the investigations;
- e) on September 4, 2005, the State attempted to give the three satellite telephones to delegates of the Community Councils, who refused to receive them because the Communities believed that "the communication system must be integrated [...] with a system of prevention and follow-up;"
- f) pressure on the Communities from business and paramilitary strategies continue. Ninety-three percent of the areas planted with oil palm are within the communal property of the beneficiaries. Therefore, "the [...] Court should make explicit reference regarding the investigation into the illegal planting of African palm in the provisional measures [...] in order to create the conditions for the return of displaced persons," and
- g) the actions taken by Army and Police Forces are inefficient insofar as the members of the Communities continue to be the target of military operations, threats, harassment and intimidation by civilian armed groups and African palm plantation businessmen.

15. The brief of the Commission, received on September 19, 2005, requesting an extension until September 30, 2005 to submit its comments on the State report. The communication of the Secretariat of September 20, 2005, whereby, following the President's instructions, the Commission was granted the extension.

16. The note of the Secretariat of October 18, 2005, whereby, following the President's orders, the Inter-American Commission was called upon to submit its comments on the State report of August 8, 2005, which was due on September 30, 2005. In addition, the State was requested to submit its report, which was due on October 8, 2005.

17. The brief by the representatives, received on October 18, 2005, providing additional information on the alleged forced disappearance of Mr. Orlando Valencia, beneficiary of the provisional measures. They informed that in the morning of October 15, 2005, the vehicle in which Mr. Valencia was riding was intercepted by the National Police and he was taken to the police station of Belén de Bajirá for questioning. After his release, while he was heading to the house of another resident of the Curbaradó basin, in the afternoon of that same day and, paramilitary gunmen on a motorcycle, forced Mr. Orlando Valencia to climb onto the vehicle and took him along the road leading from Belén de Bajirá to Barranquillita. In this regard, the representatives stated that "the complicity of Bajirá police, whether by act or omission, in this forced disappearance is evident. Paramilitary and police operations [...] take place in the same geographic area. Both police and [...] paramilitary forces were involved in the kidnapping operation," and they attributed Mr. Orlando Valencia's forced disappearance to the "execution of [...] threats issued by the military during paramilitary operations directed against the Afro-descendants."

18. The brief by the Commission, received on December 30, 2005, in which they included their comments on the report submitted by the State and pointed out, *inter alia*, that:

- a) "on October 15, 2005, members of paramilitary groups kidnapped and murdered Mr. Orlando Valencia, beneficiary of the provisional measures, whose body was not found until October 22, 2005" and stated that "Mr. Valencia was one of the candidates for the legal representation of the Consejo Mayor (General Council) of Curbaradó." Therefore, the Commission considered it necessary that the State make a statement regarding these incidents and the allegations concerning State agents' involvement, in light of the obligation to protect the members of the Communities;
- b) the accounts of witnesses regarding the arrest of Mr. Valencia, "which served as a prelude to his kidnapping and murder by a paramilitary group", indicated that he would have allegedly been questioned and harassed by the Belén de Bajirá Police in relation to his involvement in the complaint regarding the illegal planting of African palm. Therefore, it is necessary to call attention to the State's failure to comply with the obligation to protect the individuals who reported the illegal plantation of African palm. The Commission reiterated its opinion regarding the connection between the planting of the palm in the communal property of the beneficiaries and the incidents of threats, harassment and violence against them.
- c) protection mechanisms involve an early warning and rapid reaction system, which depends on elements such as the use of satellite communication devices. This obligation has not been efficiently fulfilled by the State in light of the situation facing the Communities;
- d) the State made no reference in its report to the presence of oversight bodies, such as the Colombian Public Prosecutor's Office or to the appointment of a permanent Community Ombudsman in the area of the Communities;
- e) the State makes no reference to special protection being afforded to humanitarian refuge areas. In this regard, the Commission received information in October 2005 of incursions made by members of the army accompanied by civilians in the humanitarian areas to steal cattle and destroy demarcations, and expressed its concern over this situation insofar as it is incompatible with the protection obligations of the State in this matter;
- f) in its report, the State referred to a series of activities in connection with the delivery of humanitarian assistance; however, it failed to mention whether

these activities are directly related to the obligation to adopt specific measures designed to promote the return of displaced persons or whether said activities were directed towards the population living in the humanitarian areas, and
 g) the State must provide information on the measures adopted in order to transfer the case concerning the death of Mr. Pedro Murillo from the military criminal justice system to the regular criminal justice system, and in order to find his body.

19. The brief of the State, received on January 2, 2006, stating, *inter alia*, that:

- a) the Colombian Public Prosecutor ordered that the Ministry of Defense, the Armed Forces Commander General and the civilian authorities of Bajo, Medio and Alto Atrato devise and implement, without delay, a security plan to protect the Communities living in these areas;
- b) the *Agencia Presidencial para la Acción Social y la Cooperación Internacional* (Presidential Agency for Social Action and International Cooperation) has coordinated the return of 300 families to the Curbaradó river basin, and provided assistance, support and food to these families;
- c) between December 9 and 11, 2005, the *Centro de Coordinación de Acción Integral de la Presidencia* (Comprehensive Action Coordination Center of the Presidency) organized a one-day Interinstitutional Mission for the purpose of providing food and medical assistance to the communities living in the Jiguamiandó river basin; however, the Communities refused assistance;
- d) on September 3, 2005, three satellite telephones were offered to the communities of Bella Flor, Pueblo Nuevo and Nueva Esperanza; however, their representatives opted not to receive them.
- e) follow-up meetings, in which the beneficiaries of these measures have participated, as well as visits to the area of the Communities have been conducted regularly;
- f) the *Dirección Seccional de Fiscalías de Quibdó* (Quibdó Divisional Prosecution Directorate) stated that the 28 investigations involved victims who are part of the Jiguamiandó and Curbaradó communities.
- g) the investigation into the murder of Mr. Cristóbal Romaña was opened and the acting prosecutor ordered the collection of evidence, among which, he ordered the taking of testimony; exhumation of the body; genetic study of the bone remains, which tested positive for DNA. The investigation is at the preliminary stage;
- h) the investigation into the death of Mr. Carlos Salinas-Becerra is at the preliminary stage;
- i) on account of the disappearance of Mr. Orlando Valencia, officers from the *Defensoría Seccional de Urabá* (Urabá Divisional Ombudsman's Office) arrived on the scene, and the Ministry of the Interior and Justice immediately created a verification and support commission, whose members visited the area of Belén de Bajirá, Jiguamiandó and Curbaradó. A commission to investigate the case was also established. At the time of this report, the results of the analysis of the balls of the fingers, dental chart, and DNA from one of the bones of the body for identification were pending, and
- j) the Colombian Public Prosecutor's Office informed the State that there were eleven ongoing disciplinary investigations in connection with incidents in which the victims were members of the Communities of Jiguaminadó and Curbaradó.

20. The brief of the representatives, received on February 4, 2006, stating, *inter alia*, that:

- a) on January 24, 2006, Mr. Alfonso Ibáñez, a beneficiary of these measures who was living in the humanitarian area of Nueva Esperanza, was allegedly murdered by members of the *Fuerzas Armadas Revolucionarias de Colombia - FARC* (Revolutionary Armed Forces of Colombia). Mr. Ibáñez "testified before state agencies [...] about the illegal appropriation of his property, the planting of [African] oil palm on Communal Property and [the] interrelationship [between the planting issue] and the paramilitary strategy;"
- b) paramilitary groups continue to operate in the region, with the tolerance of local army and police authorities, mainly in African palm plantations and at the entrances to the protected Communities located in the hamlets of Bajirá, Pavaradó and Barranquillita. The level of violence in the area has caused the Communities to become isolated, restricting their free access to health, education and commercial centers;
- c) the Communities refuse to accept that humanitarian assistance by the State should be accompanied by the militarization of their private property and humanitarian area. Although the armed forces should be present in the communal property, they must respect the private areas of the members of the Community, such as wheat plantations and biodiversity reserve areas.
- d) There is no information about the 300 families who have returned to Curbaradó and received food for their return. The Afro-descendant Communities of Jiguamiandó and Curbaradó living in the humanitarian areas have not been the beneficiaries of the actions taken by the State. To date, Colombia has not provided comprehensive humanitarian assistance in coordination with the Communities so as to meet food, housing, health and education needs;
- e) the State militarily occupied humanitarian area private property and, on December 9, 2005, conducted a one-day Interinstitutional Mission to provide humanitarian assistance with the participation of members of the 17th Army Brigade. This was interpreted by the Communities as "a violation of the humanitarian areas that put them at risk, insofar as it had not been arranged with the Communities;"
- f) there is no comprehensive solution by the State to address the issue of the return of displaced persons, the early warning mechanism, and follow-up and prevention mechanisms;
- g) there is no regular assessment mechanism of the results of the measures adopted by the State;
- h) since 1996 there have been thirteen cases of forced displacement due to State action, one case of displacement due to armed confrontation and another due to the action of the *Fuerzas Armadas Revolucionarias de Colombia (FARC)* (Revolutionary Armed Forces of Colombia) and 113 crimes, 5 of them attributable to the guerrilla and the rest to military and paramilitary action and the illegal planting of African palm. There is still no proper investigation into these incidents;
- i) "the State does not take into consideration the connection between each of these crimes committed since October 1996 to date, considering that they all involved a similar method of operation, the same armed groups and the same intention to destroy the Communities;"
- j) it is disquieting that there are five criminal proceedings against the members of the Community Councils of Curbaradó and Jiguamiandó; the Cacarica communities; Justicia y Paz; and the international humanitarian organizations "Colombia Solidarity & Accompaniment Project" (PASC) of Canada and "Peace Brigades International". In this regard, the afore-mentioned persons

have filed criminal complaints with different State agencies, such as the Colombian Public Prosecutor's Office; and

k) there are still cases pending in the military criminal justice system, such as the case of Mr. Pedro Murillo's death, and the whereabouts of his remains are still unknown.

CONSIDERING:

1. That Colombia ratified the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") on July 31, 1973 and recognized the jurisdiction of the Inter-American Court, in accordance with Article 62 thereof, on June 21, 1985.

2. That Article 63(2) of the American Convention sets forth 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. That, in this connection, Article 25 of the Court Rules of Procedure provides that:

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 a case not yet submitted to the Court, it may act at the request of the Commission."
[...]

4. That Article 1(1) of the Convention establishes the general obligation of the States Parties to respect the rights and freedoms enshrined therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, which entails the duty to adopt such measures as may be necessary to ensure their protection. These obligations become even more apparent in relation to those involved in proceedings before the supervisory bodies of the American Convention.¹

5. That, under International Human Rights Law, provisional measures are not only precautionary in the sense that they preserve a legal interest, but fundamentally protective in that they safeguard human rights. Provided that the basic requirements of extreme gravity and urgency and the need to prevent irreparable damage to persons are met, provisional measures become a true preventive judicial guarantee.²

¹ Cf., *inter alia*, *Matter of Eloisa Barrios et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering clause No. 6, *Matter of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 15, 2005, Considering clause No. 5, and *Matter of The Communities of Jiguamiandó and Curbaradó*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 15, 2005, Considering clause No. 5.

² Cf., *inter alia*, *Matter of Eloísa Barrios et al.*, *supra* note 1, Considering clause No. 7; *Matter of Luisiana Ríos et al (Radio Caracas Televisión – RCTV)*. Provisional Measures. Order of the Inter-American Court of Human Rights of September 12, 2005, Considering clause No. 4, and *Matter of Urso Branco Prison*.

6. That in order to make the rights enshrined in the American Convention effective, the State Party has the obligation, *erga omnes*, to protect all persons under its jurisdiction, not only in relation to the power of the State but also with respect to the actions of private individuals, including any kind of irregular armed groups. The Court notes that, given the special circumstances of the instant case, and the general situation of the armed conflict in the State, it is necessary to ensure the protection, by means of provisional measures, of all members of the Communities, in accordance with the provisions of the American Convention and of International Humanitarian Law.³

7. That, pursuant to Article 63(2) of the Convention, it is mandatory for the State to adopt such provisional measures as this Court may order, insofar as the basic principle of the Law of State Responsibility, supported by international case law, provides that States must fulfill their treaty obligations in good faith (*pacta sunt servanda*).

8. That this Court has, on past occasions,⁴ ordered the protection of a plurality of persons who have not been previously named but who can be identified and determined and who are in grave danger because they are part of a group or community. The Communities constituted by the Community Council of Jiguamiandó and the families of Curbaradó, have, at the time of the request of these provisional measures, a population of approximately 2,125 people who comprise 515 households, and constitute an organized community, located in a specific geographic location in the municipality of Carmen del Darién, Department of Chocó, whose members may be identified and, because they belong to said community, they all face the same risk of aggression against their personal integrity and life or of being forced out of their land, which, in turn, prevents them from exploiting the natural resources necessary for sustenance.

9. That, given that the situation existing in the Communities of Jiguamiandó and Curbaradó has forced its residents to move to other regions of the country, it is necessary for the State to ensure that the beneficiaries of these measures can continue to live in their usual residence⁵ and to provide the necessary conditions so that those members of the Community who have been forced to leave may return to their homes.

Provisional Measures. Order of the Inter-American Court of Human Rights of September 21, 2005, Considering clause No. 5.

³ Cf., *inter alia*, *Matter of the Peace Community of San José de Apartadó*, *supra* note 1, Considering clause No. 9, and *Matter of the Communities of Jiguamiandó and Curbaradó*, *supra* note 1, Considering clause No. 8.

⁴ Cf., *inter alia*, *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 17, 2005, Considering clause No. 6; *Matter of Luisiana Ríos et al (Radio Caracas Televisión - RCTV)*, *supra* note 2, Considering clause No. 11; and *Matter of the Peace Community of San José de Apartadó*, *supra* note 1, Considering clause No. 7.

⁵ Cf., *inter alia*, *Matter of the Communities of Jiguamiandó and Curbaradó*, *supra* note 1, Considering clause No. 10; *Matter of the Peace Community of San José de Apartadó*, *supra* note 1, Considering clause No. 8, and *Matter of Giraldo Cardona*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 5, 1997, Considering clause No. 5.

10. That the State must guarantee the protection of the civilians that are the beneficiaries of these provisional measures, in accordance with the provisions of the American Convention and the rules of International Humanitarian Law, and ensure that said rules are observed by all agents, whether state or private, in the context of the domestic armed conflict in Colombia.⁶

11. That the Court considers it appropriate to urge the State to guarantee and enforce the observance of the principle of distinction of International Humanitarian Law in relation to the members of the Communities protected by these measures, who are civilians that are not involved in the domestic armed conflict.

12. That in accordance with the Orders of the Inter-American Court of March 6, 2003, November 17, 2004 and March 15, 2005, the State must adopt such measures as may be necessary to protect the life and the right to humane treatment of all the members of the Communities of Jiguamiandó and Curbaradó and ensure that the beneficiaries of these measures can continue to live in their usual residence,⁷ without fear of coercion or threat, and that displaced persons may return to their homes or to the "humanitarian areas" established by these Communities. In addition, the State is under the obligation to investigate the facts that led to the adoption and maintenance of these provisional measures in order to identify those involved and punish them accordingly (*supra* Having Seen clauses No. 1, 2 and 3).

13. That, pursuant to operative paragraph number seven of the Order issued by the Court on March 15, 2005 (*supra* Having Seen clause No. 3), the State must submit a report on the implementation of the provisional measures every two months. In addition, the Inter-American Commission and the representatives must submit their comments on the State reports.

14. That the State submitted the report requested in operative paragraph number four of the last Order issued by the Court (*supra* Having Seen clause No. 3), due on May 27, 2005 (*supra* Having Seen clauses No. 8, 9, 10, 11, 12 and 13) on August 8, 2005. The State has also failed to submit the bimonthly report due on October 8, 2005 despite the request from the Secretariat, as instructed by the President (*supra* Having Seen clause No. 16). Colombia has not complied with the obligation to submit reports on the measures adopted every two months, as required in the aforesaid Order of March 15, 2005.

15. That the Inter-American Commission submitted its comments on the State report, which were due on September 30, 2005, on December 30, 2005, despite having been granted an extension and having been required to do so by the Secretariat, following the President's orders (*supra* Having Seen clauses No. 16 and 18).

16. That the Court has established that failure by the State to report on the provisional measures adopted in compliance with the Court's decisions is particularly serious given the legal nature of these measures, which seek to prevent irreparable

⁶ Cf., *inter alia*, *Matter of the Peace Community of San José de Apartadó*, *supra* note 1, Considering clause No. 9, and *Matter of the Communities of Jiguamiandó and Curbaradó*, *supra* note 1, Considering clause No. 8.

⁷ Cf., *inter alia*, *Matter of the Communities of Jiguamiandó and Curbaradó*, *supra* note 1, Considering clause No. 10; *Matter of the Peace Community of San José de Apartadó*, *supra* note 1, Considering clause No. 8; and *Matter of Giraldo Cardona*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 5, 1997, Considering clause No. 5.

damage to persons in situations of extreme gravity and urgency.⁸ That the obligation to report to the Court on the implementation of measures is twofold, which, for effective compliance, requires the formal submission of a document within the specified time limit and with specific, updated, detailed and factual information on the issues to which this obligation refers.⁹

17. That the Court emphasizes the importance of the submission of comments by the Commission and the representatives of the beneficiaries on the information provided by the State. The Court considers it necessary to point out that the Commission's comments are essential to evaluate the implementation, on the part of the State, of the provisional measures ordered by the Court, considering the severity of the situation and dangerous conditions facing the beneficiaries as well as the fact that the Inter-American Commission, as an organ of the inter-American system, must provide for the protection of human rights.

18. That the State has informed the Court, *inter alia*, of the adoption of several measures in furtherance of its obligations, such as the implementation by the Ministry of Defense and the armed forces of a security plan to protect the Communities of Jiguamiandó and Curbaradó. It also indicated that the *Red de Solidaridad Social* (Social Solidarity Network) had carried out several activities in relation to the Communities, such as delivery of emergency humanitarian assistance in cases of displacement; supply of food; support for the scheduled return of displaced families to the Communities; and formulation of production projects through a community-university-business-state alliance. The State specified that there are 28 cases at "the preliminary stage or evidence gathering stage", 2 cases at "the pre-trial investigation stage" and 3 cases at the "preliminary complaint investigation stage." In addition, it stated that several proceedings were conducted in the course of the investigation into the death of Pedro Murillo and the child Ricardo Guaraona, pending in the military criminal justice system. Finally, the State informed the Court that the Colombian Public Prosecutor's Office opened criminal investigations into the alleged Trespass to Areas of Special Ecological Significance by the company "URAPALMA";

19. That the representatives informed the Court, *inter alia*, of the alleged forced disappearance and subsequent death of Mr. Orlando Valencia on October 18, 2005, in respect of which they pointed out that "the complicity of Bajirá police, whether by act or omission, in this forced disappearance [was] evident [, and that] both police and [...] paramilitary forces were involved in the kidnapping operation." They also referred to the death of Mr. Alfonso Ibáñez, resident of the Humanitarian Areas of "Nueva Esperanza", on January 24, 2006, who was allegedly killed by the *Fuerzas Armadas Revolucionarias de Colombia - FARC* (Revolutionary Armed Forces of Colombia). Moreover, they stated that the actions taken by the army and police forces were inefficient insofar as the members of the Communities continued to be the target of

⁸ Cf., *inter alia*, *Matter of the Peace Community of San José de Apartadó*, *supra* note 1, Considering clause No. 12; *Matter of the Communities of Jiguamiandó and Curbaradó*, *supra* note 1, Considering clause No. 11; and *Case of Bámaca-Velásquez*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 11, 2005, Considering clause No. 15.

⁹ Cf., *inter alia*, *Matter of Luisiana Ríos et al (Radio Caracas Televisión - RCTV)*, *supra* note 2, Considering clause No. 17; *Matter of Luis Uzcátegui*. Provisional Measures. Order of the Inter-American Court of Human Rights of December 2, 2003, Considering clause No. 12, and *Matter of Marta Colomina and Lilliana Velásquez*. Provisional Measures. Order of the Inter-American Court of Human Rights of December 2, 2003, Considering clause No. 14.

military operations, threats and intimidation on the part of civilian armed groups and African palm plantation businessmen. In this regard, they pointed out that 93% of the areas planted with oil palm are within the boundaries of the communal property of the beneficiaries; therefore, it is necessary for the State to conduct an investigation into the illegal planting of African palm and to adopt measures to deter its expansion, so as to create the conditions for the return of displaced persons. With respect to the investigations, the representatives pointed out that, according to the information provided by the State, all cases are at a preliminary stage, which means that there is no formal investigation, and that the fact that some investigations are in the military criminal justice system impairs the right to know the truth and the right to justice. They recognized the importance of humanitarian assistance and State protection; however, they stated that such measures may not be accompanied of the militarization of private property or humanitarian areas. Finally, they indicated that the communication system must be integrated with a prevention and follow-up system and that the State has failed to provide a comprehensive solution in relation to preventive security measures, such as the communication and monitoring system (*supra* Having Seen clauses No. 14, 17 and 20).

20. That the Commission informed the Court, *inter alia*, that "on October 15, 2005, members of paramilitary groups kidnapped and murdered Mr. Orlando Valencia, [who was one of the candidates to handle the legal representation of the Consejo Mayor (General Council) of Curbaradó] whose remains were not found until October 22, 2005." It pointed out that it was important for the State to make a statement regarding the alleged murder of Mr. Orlando Valencia and the allegations concerning State agents' involvement in his death, insofar as, given the circumstances surrounding the murder, which would have allegedly happened after he was questioned by the police of Belén de Bajirá in relation to his participation in the complaint regarding the illegal planting of oil palm, it is necessary to call attention to the State's failure to comply with the obligation to protect the individuals who reported the illegal plantation of African palm. In this regard, the Commission pointed out again the connection between the planting of the palm in the communal property of the beneficiaries and the incidents of threats, harassment and violence against them. It also indicated that the State made no reference in its report to the presence of oversight bodies, such as the Colombian Public Prosecutor's Office, or to the appointment of a permanent Community Ombudsman in the area of the Communities or to the special protection that must be provided to the humanitarian refuge areas. In this regard, the Commission stated that, in October 2005, it received information of incursions made by members of the army accompanied by civilians in the humanitarian areas to steal cattle and destroy demarcations, and expressed concern over this situation given that these incidents were incompatible with the protection obligations of the State under the provisional measures. As regards the obligations of the State, the Commission indicated that the duty to provide means of satellite communication had not been fulfilled with the required efficiency in light of the conditions facing these Communities. Finally, it pointed out that the State must provide information on the measures adopted in order to transfer the case concerning the death of Mr. Pedro Murillo from the military criminal justice system to the regular criminal justice system as well as to find the whereabouts of Mr. Murillo's body (*supra* Having Seen clause No. 18.)

21. That even after the adoption of these provisional measures, according to the information provided by the Commission and the representatives (*supra* Having Seen clauses No. 14, 17, 18 and 20), the members of the Communities continue to be the target of numerous threats and incidents of harassment, arbitrary detention, forced

disappearance, murder and attempt of murder, reportedly by army and police forces or by irregular armed groups. In particular, the Court was informed about the death of another two members of the Communities protected by provisional measures, Mr. Orlando Valencia and Mr. Alfonso Ibáñez, when the essential purpose of the adoption of these measures is the effective protection and preservation by the State of the right to life and to humane treatment of the members of the Communities of Jiguamiandó and Curbaradó. The State must immediately adopt such measures as may be necessary to put an end to this kind of incidents, conduct a thorough investigation into the deaths of the aforesaid persons and determine the resulting responsibilities.

22. That the Court, considering the information provided by the Commission, the representatives and the State (*supra* Having Seen clauses No. 13, 14, 17, 18, 19 and 20) and the vulnerability of the beneficiaries of the provisional measures, deems it necessary that the State provide and implement the necessary technical means for the appropriate and continuous supervision and protection of the Communities and the humanitarian areas.

23. That, based on the information provided by the representatives, the Commission and the State regarding the link between the planting of palm in the land of the Communities and the impossibility of the displaced persons to return to their homes, and the incidents of harassment and the threats faced by the beneficiaries, the Court reiterates to the State the need for immediate action to address the issue of oil palm plantations. In this regard, the Court appreciates the information given by the State that the Colombian Public Prosecutor's Office has opened criminal investigations into the alleged incidents of Trespass to Areas of Special Ecological Significance by the company "URAPALMA", which falls within the scope of the obligation of the State to protect the personal integrity of the beneficiaries of the measures; an obligation that is imposed on State officers and agencies and also in relation to the action of private individuals.

24. That the representatives informed the Court that (*supra* Having Seen clause No. 7) Hugo de Jesús Tuberquia-Tuberquia, Andrés Borja-Romaña, Eladio Blandón-Denis, Lus Mary Cabeza-Martínez, Ligia María Chaverra-Mena, Enrique Manuel Petro-Hernández, Miguel Mariano Martínez-Cuava, Cristóbal Blandón-Borja, José del Carmen Villalba-Algumedos, Willinton Cuesta-Córdoba, Epifanio Córdoba-Borja and Erasmo Sierra-Ortiz testified before the *Procuraduría Delegada para la Prevención en materia de Derechos Humanos y Asuntos Étnicos* (Delegate Attorney General's Office for the Prevention of Human Rights and Ethnic Affairs) and filed a petition for the protection of constitutional rights regarding the alleged planting of oil palm in the communal property of the community. Therefore, the Court deems it necessary that the State report on the measures adopted to protect the life and integrity of these persons and their families and adopt such measures as may be necessary to ensure prevention of irreparable damage to the aforesaid persons, as set forth in operative paragraph number three of the Order of March 15, 2005.

25. That, considering the statements of the Commission and the representatives (*supra* Having Seen clauses No. 14 and 18) regarding the fact that some of the investigations into the incidents giving rise to the implementation of these measures, in particular, the death of Mr. Pedro Murillo and the child Ricardo Guaraona, are pending before Colombian military courts, the Court deems it necessary to emphasize that in a democratic State under the rule of law military criminal jurisdiction should be restrictive

and exceptional and aimed only at protecting special legal interests, related to the functions that the law confers upon the armed forces.¹⁰

26. That the Commission and the representatives (*supra* Having Seen clauses No. 14, 17, 18 and 20) have reported serious acts of violence, allegedly by paramilitary groups, members of other irregular armed groups as well as by Army officers against the beneficiaries. Given the special circumstances of the instant case, and the general situation of the domestic armed conflict, it is necessary that the State immediately adopt measures to adequately prohibit, deter and punish the aforesaid criminal activity.¹¹

27. That given the severity of the situation facing the members of the Communities, as evidenced by the latest incidents reported by the representatives and the Commission, it is necessary to request the State once again to promptly and effectively adopt all such measures as may be necessary to ensure the full exercise of the right to life and to humane treatment of the members of the Community protected by these provisional measures.

28. That the State is under the obligation to investigate the facts that led to the adoption and maintenance of these provisional measures in order to identify the perpetrators and punish them accordingly.

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority vested in it by Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of the Court Rules of Procedure,

DECIDES:

1. To reiterate to the State the need to maintain the measures adopted and to immediately implement such measures as may be necessary to effectively protect the life and the right to humane treatment of all the members of the Community Council of Jiguamiandó and the families of Curbaradó, as set forth in the Orders of the Inter-American Court of Human Rights of March 6, 2003, November 17, 2004, and March 15, 2005.

2. To reiterate to the State to continue investigating the facts that led to the adoption and maintenance of these provisional measures in order to identify the perpetrators and punish them accordingly and, in particular, to investigate and find the person or persons responsible for the death of Mr. Orlando Valencia and Mr. Alfonso Ibáñez.

¹⁰ Cf. *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. para. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. *Case of Lori Berenson-Mejía*. Judgment of November 25, 2004. Series C No. para. and *Case of 19 Tradesmen*. Judgment of July 5, 2004. Series C No. 1para.165.

¹¹ Cf. *Matter of the Peace Community of San José de Apartadó*, *supra* note 1, Considering clause No. 21; *Matter of the Communities of Jiguamiandó and Curbaradó*, *supra* note 1, Considering clause No. 18; and *Case of 19 Tradesmen*. Judgment of July 5, 2004. Series C No. 109, para. 122.

3. To reiterate to the State that the beneficiaries of these measures or their representatives must be allowed to participate in the planning and implementation of the protective measures and, in general, must be kept informed of the progress made in relation to the measures ordered by the Inter-American Court of Human Rights.

4. To reiterate to the State to submit to the Inter-American Court of Human Rights, no later than March 15, 2006, the report on the provisional measures ordered, in accordance with the requirements laid out in Considering clauses No. 16, 21, 22, 24, 26 and 27 hereof.

5. To request the representatives of the beneficiaries of the measures to submit to the Inter-American Court of Human Rights, within seven days following notice of the State report, such comments as they may deem appropriate.

6. To request the Inter-American Commission on Human Rights to submit to the Inter-American Court of Human Rights, within fifteen days following notice of the State report, such comments as it may deem appropriate.

7. To reiterate to the State that it must continue providing information to the Inter-American Court of Human Rights every two months regarding the provisional measures adopted, and to request the beneficiaries of these measures or their representatives to submit their comments within four weeks following notice of the State reports, and the Inter-American Commission on Human Rights to submit its comments on said reports within six weeks following receipt.

8. To notify the Inter-American Commission on Human Rights, the representative of the beneficiaries and the State of this Order.

Judge Cañado Trindade informed the Court of his Concurring Opinion, which accompanies this Order.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

CONCURRING OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. In voting in favor of the adoption of this new Order of the Inter-American Court of Human Rights granting Provisional Measures of Protection regarding Colombia in the *Matter of the Communities of Jiguamiandó and Curbaradó*, I feel obliged to include in this Concurring Opinion, albeit briefly, my personal reflections on the facts of the *cas d'espèce* and of other recent cases that have led this Court to order Provisional Measures of Protection. Curre

ntly, over 11,500 people (including members of entire communities), residing in Latin American countries and the Caribbean, are under the protection of provisional measures ordered by this Court.¹² The implementation of these measures has extended and they have assumed considerable importance in the last decade, thus becoming a true preventive judicial *guarantee*.¹³ And the Inter-American Court, more than any other contemporary international court, has significantly contributed to their development in both International Human Rights Law and contemporary Public International Law.

2. Therefore, it is a matter of great concern to me to see that a remarkable legal remedy, which has saved many lives and prevented other irreparable damage to persons -holders of the rights protected by the American Convention on Human Rights-, begins to prove insufficient in certain extreme circumstances. I am deeply concerned that, in the last five years, as a direct result of the increasingly violent and dehumanized world in which we live, some individuals that were under the protection of provisional measures ordered by this Court have, however, been arbitrarily deprived of their lives.

3. This has taken place - paradoxically, *pari passu* with the extraordinary expansion of Provisional Measures of Protection under the American Convention - not only in this *Matter of the Communities of Jiguamiandó and Curbaradó* regarding Colombia (2003-2006), but also in the *Matter of Eloisa Barrios et al* regarding Venezuela (2005), in the *Matter of Urso Branco Prison* regarding Brazil (2004-2006), in the *Matter of the Mendoza Prisons* regarding Argentina (2005-2006), in the *Matter of the Peace Community of San José de Apartadó* regarding Colombia (2002-2006), in the *Matter of Children Deprived of Liberty in the "Complejo do Tatuapé" of FEBEM*

¹² . In the *Matter of Pueblo Indígena de Kankuamo* regarding Colombia only, there are approximately 6,000 beneficiaries of the measures; in the *Matter of the Peace Community of San José de Apartadó* regarding Colombia, the beneficiaries are over 1,200; in the *Matter of the Communities of Jiguamiandó and Curbaradó* regarding Colombia, the beneficiaries are over 2,000; in the *Matter of Urso Branco Prison* regarding Brazil, almost 900 inmates benefit from the measures; in the *Matter of Pueblo Indígena de Sarayaku* regarding Ecuador, there are approximately 1,200 beneficiaries; among several others.

¹³ . A.A. Cançado Trindade, "Les Mesures provisoires de protection dans la jurisprudence de la Cour Interaméricaine des Droits de l'Homme", in *Mesures conservatoires et droits fondamentaux* (publ. G. Cohen Jonathan and J.-F. Flauss), Bruxelles, Bruylant/Nemesis, 2005, pp. 145-163; A.A. Cançado Trindade, "Les Mesures provisoires de protection dans la jurisprudence de la Cour Interaméricaine des Droits de l'Homme", 4 *Revista do Instituto Brasileiro de Direitos Humanos* (2003) pp. 13-25; A.A. Cançado Trindade, "The Evolution of Provisional Measures of Protection under the Case-Law of the Inter-American Court of Human Rights (1987-2002)", 24 *Human Rights Law Journal* - Strasbourg/Kehl (2003), no. 5-8, pp. 162-168.

regarding Brazil (2005-2006), and in the *Matter of James et al* regarding Trinidad y Tobago (2000-2002). This requires a reaction from Law in order to protect the vulnerable and defenseless.

4. In the cases cited above, there has been, therefore, a clear failure to comply with the Provisional Measures of Protection ordered by the Court, which are more than precautionary; they are truly *protective*. Notwithstanding the merits of the aforesaid cases (the alleged or reported original violations of the American Convention), there has been a violation of protective measures, essentially preventive in nature, which effectively safeguard fundamental rights, - almost always irrevocable rights, such as the right to life -, insofar as they seek to prevent irreparable damage to the human being as subject of International Human Rights Law and contemporary Public International Law.

5. This means - and this is the fundamental point that I would like to emphasize in this Concurring Opinion, as I have consistently done in past Opinions-, that, notwithstanding the merits of the respective cases, *the concept of victim also emerges in the new context of the Provisional Measures of Protection*. There is no escaping this point, which puzzles and concerns me. Moreover, also in this context of prevention of irreparable damage to the human being, the central importance of the human person, though victimized, is affirmed.¹⁴

6. Provisional Measures of Protection impose obligations on the States, which are different from the obligations resulting from the Judgments rendered on the respective merits of the cases. There are actually obligations that result from Provisional Measures of Protection *per se*. They are completely different from the obligations that may be imposed by a Judgment on the merits (and reparations, if applicable) of the *cas d'espèce*. This means that Provisional Measures of Protection constitute an *autonomous* legal remedy; they actually have their own *legal framework*, which in turn, reveals the importance of the *preventive* dimension of the international protection of human rights.

7. So much so that, under the American Convention (Article 63(2)), the international liability of a State may arise from failure to comply with Provisional Measures of Protection ordered by the Court, even if the respective merits of the case are not pending before the Court (but rather before the Inter-American Commission on Human Rights). This confirms my thesis, which I set myself to advance in this Concurring Opinion, that Provisional Measures of Protection, in light of their autonomy, have their own legal framework, and failure to comply with them results in liability of the State. It has legal consequences, in addition to underscoring the central role of the victim (of such non-compliance), notwithstanding the consideration and decision of the specific case at issue upon its merits.

¹⁴. Cf. A.A. Cançado Trindade, *El Acceso Directo del Individuo a los Tribunales Internacionales de Derechos Humanos* (Direct Access of Individuals to International Human Rights Courts), Bilbao, Universidad de Deusto, 2001, pp. 9-104.

8. In addition to the conventional basis provided by Article 63(2) of the American Convention, Provisional Measures are further reinforced by the general obligation of the States Parties, under Article 1(1) thereof, to respect and to ensure respect for the protected rights, without discrimination, of all persons under their respective jurisdiction. The broad scope of this general obligation, which also encompasses the provisional measures of protection, is analyzed in my recent Separate Opinion (paras. 15-21) in the Judgment of the Court in the *Case of the girls Jean and Bosico v. República Dominicana* (September 8, 2005), Separate Opinion (paras. 2-7 and 17-29) in the Judgment of the Court in the *Case of the "Mapiripán Massacre" v. Colombia* (September 15, 2005), and Separate Opinion (paras. 2-13) in the *Case of the Pueblo Bello Massacre v. Colombia* (January 31, 2006). The aforesaid Article 1(1) also provides the conventional basis for the obligations *erga omnes partes* under the Convention.

9. I have the feeling that, despite everything this Court has done for the evolution of the Provisional Measures of Protection - and, I insist, more than any other contemporary international court- there is still a long way to go. It is necessary to preserve the already considerable legacy of said measures under the American Convention. It is necessary to conceptually strengthen their legal framework, for the benefit of the protected persons and of the victims of non-compliance (notwithstanding the merits of the respective cases). This becomes even more imperative where - as is the case in this *Matter of the Communities of Jiguamiandó and Curbaradó* regarding Colombia- there are repeated acts of harassment and aggression (and even death threats), which reveal a growing pattern of aggression and violence, against persons that were already under the protection of provisional measures ordered by this Court. This is absolutely imperative in a world that has become dehumanized and devoid of values.

10. Provisional Measures of Protection, the development of which under the American Convention to date has been a true victory of Law, are, however, in my opinion, still very much in their infancy, at an early stage of evolution, and they will grow and strengthen even more as the universal juridical conscience awakens towards their complete conceptual refinement. International Human Rights Law has transformed the *conception* itself of these measures¹⁵ - from precautionary to protective-, thus revealing the current historical process of *humanization* of Public International Law¹⁶ also in this specific field. However, this process is still in progress.

¹⁵ . A.A. Cançado Trindade, "Address by the President of the Inter-American Court of Human Rights", in *Compendium of Provisional Measures* (June 2001-July 2003), Volume No. 4, Series E, San José de Costa Rica, Inter-American Court of Human Rights, 2003, pp. V-XXII.

¹⁶ . Cf. A.A. Cançado Trindade, "*La Humanización del Derecho Internacional y los Límites de la Razón de Estado*" (The Humanization of International Law and the Limits of the Reason of the State), 40 *Revista da Faculdade de Direito da Universidade Federal de Minas Gerais - Belo Horizonte/Brazil* (2001) pp. 11-23.

11. It is necessary to proceed resolutely in this direction. It is imperative, in these days, that the next step be the development of their legal framework, and, within such framework, of the *legal consequences* of non-compliance with or violation of Provisional Measures of Protection, as autonomous remedies. In my view, the *victims* occupy, both in this context of prevention as well as in the decision on the merits (and possible reparations) of the cases, a truly central position, as subjects of International Human Rights Law and contemporary Public International Law with international legal standing.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra-Alessandri
Secretary