

**Order of the President of the
Inter-American Court of Human Rights
of December 17, 2007
Provisional Measures regarding Colombia
Matter of the Jiguamiandó and the Curbaradó Communities**

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") of March 6, 2003, in which it decided:

1. To call upon the State of Colombia to adopt forthwith all necessary measures to protect the lives and safety of all the members of the communities composed of the Community Council of the Jiguamiandó and the families of the Curbaradó.

2. To call upon the State of Colombia to investigate the acts that gave rise to the adoption of these provisional measures in order to identify those responsible and impose the corresponding punishment.

3. To call upon the State of Colombia to adopt all necessary measures to ensure that the persons benefiting from these measures may continue living in their place of residence, free from any kind of coercion or threat.

4. To call upon the State of Colombia, in accordance with the provisions of the American Convention on Human Rights, to grant special protection to the so-called "humanitarian refuge zones" established for the communities comprising the Community Council of the Jiguamiandó and the families of the Curbaradó and, to that effect, to adopt the necessary measures so that they may receive all the humanitarian aid sent to them.

5. To call upon the State of Colombia to ensure the necessary security conditions so that the members of the communities comprising the Community Council of the Jiguamiandó and the families of the Curbaradó, who have been forcibly displaced to jungle zones or other regions, may return to their homes or to the "humanitarian refuge zones" established for these communities.

6. To call upon the State of Colombia to establish a continuous monitoring and permanent communication mechanism in the so-called "humanitarian refuge zones," in accordance with the terms of this Order.

7. To call upon the State of Colombia to allow the representatives appointed by the beneficiaries of these measures to take part in their planning and implementation and, in general, to keep them informed of progress in the measures ordered by the Inter-American Court of Human Rights.

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2. The Orders of the Inter-American Court of November 17, 2004, March 15, 2005, and February 7, 2006, in which it decided, *inter alia*, to require the State to maintain the measures adopted pursuant to the Order of March 6, 2003.

3. The reports of the State of Colombia (hereinafter "the State") of January 2, June 16 and September 13, 2006, and April 18 and November 15, 2007, together with the briefs of March 2, September 27 and November 20, 2007.

4. The briefs of the representatives of the beneficiaries of the provisional measures (hereinafter "the representatives") of February 4, June 5, August 5, September 14 and October 28, 2006, and February 15 and May 29, 2007.
5. The observations of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") of May 8, August 28, and November 16, 2006, and September 25, 2007.
6. The brief of December 20, 2006, submitted by 32 families of Puerto Lleras and Pueblo Nuevo in the valley of the Jiguamiandó River, and the brief of October 1, 2007, submitted by 177 families of the Curbaradó Community Council, in which they asked to be allowed to represent themselves in the processing of these provisional measures.

CONSIDERING:

1. That Colombia ratified the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") on July 31, 1973, and accepted the jurisdiction of the Inter-American Court, pursuant to Article 62 of the Convention, on June 21, 1985.
2. That 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. That Article 25(1) of the Court's Rules of Procedure stipulate 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. That, pursuant to the Orders of the Inter-American Court of March 6, 2003, November 17, 2004, March 15, 2005, and February 7, 2006 (*supra* first and second having seen paragraphs), the State must, *inter alia*: (a) adopt, without delay, the necessary measures to protect the lives and safety of all the members of the communities composed of the Community Council of the Jiguamiandó and the families of the Curbaradó; (b) adopt all necessary measures to ensure that the persons benefiting from these measures may continue living in their place of residence, free from any kind of coercion or threat; (c) grant special protection to the so-called "humanitarian refuge zones" established for the communities comprising the Community Council of the Jiguamiandó and the families of the Curbaradó; (d) ensure the necessary security so that the members of the beneficiary communities who have been forcibly displaced may return to their homes or to the "humanitarian refuge zones" established for these communities, and (e) establish a continuous monitoring and permanent communication mechanism in the so-called "humanitarian refuge zones."

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5. That, regarding the security measures adopted in favor of the communities that are the beneficiaries of the provisional measures, the State has referred to Directive No. 008 (2005) of the Public Prosecutor's Office (*Procuraduría General*), which requires the

Armed Forces and the civil authorities of Bajo, Medio and Alto Atrato to design and implement a security plan that takes into account the reports of the social organizations and the presence of illegally armed individuals. In this regard, the State reported that, in compliance with this directive, the National Army, through the Commander of the Seventeenth Brigade, issued a security plan to guarantee the security of the districts (*corregimientos*) of Medio Atrato and to protect the civilian population, especially the communities of the valleys of the Jiguamiandó, Curbaradó and Cacarica Rivers, and also to protect the collective territories under extensive oil palm exploitation. The State indicated that the National Army's Seventeenth Brigade maintains a permanent presence in the valleys of the Jiguamiandó and Curbaradó Rivers and that, in addition to exercising effective military control in the area, it also conducts attacks on the different illegal armed groups. Furthermore, the State advised that the Ministry of Defense had issued Permanent Ministerial Directive No. 07 (2007), establishing a "Sectoral Policy of Reconnaissance, Prevention and Protection of the Black, Afro-Colombian, Raizal and Palenquera communities"; the directive describes the rights of these communities and seeks to disseminate information on these rights to the Police. The State also indicated that the commander of the Urabá Police Department had implemented permanent security and protection measures and actions through police units posted to places in Bajo Atrato, including, areas of access to the communities of African descent and the collective territories of the municipality of Carmen del Darién. The National Police have been planning joint actions with the Joint Force of Atrato in order to neutralize and counteract the attacks on public order, as well as to protect the people who live there from threats to their rights, and to prevent such threats.

6. That, in their observations, the representatives indicated that they were unaware of the contents of Directive No. 008 or its results as regards prevention, and also that the acts of violence perpetrated by paramilitary groups and the guerrilla continue. In addition, they considered that "[...] the security measures adopted by [the Seventeenth] Brigade have been neither adequate nor effective to counteract the situation of violence against the inhabitants, and that the response of the Ministry of Defense has been "[...] ambiguous and vague in relation to the population regarding whom the prevention measures should be adopted." The representatives reported that the beneficiary population is evidently in danger from paramilitary operations, since "some paramilitary structures have still not been demobilized completely and other new ones have arisen, so that there have been frequent threats, and dangerous situations persist." In addition, they indicated that the National Police have not carried out any specific actions to pursue and combat the paramilitary groups operating in the region of Bajo Atrato Chocoano and that the operations conducted have created a situation of greater vulnerability for the beneficiary communities and have distanced them. The operations have included, "[...] seizures and administrative detentions that, in some cases, deteriorate into arbitrary detentions; as a result, the inhabitants of the Jiguamiandó humanitarian zones abstain from traveling to the towns of Carmen del Darién and Murindó."

7. That the Inter-American Commission considers that the operations indicated by the State appear to be mainly related to combating illegal armed groups belonging to the Revolutionary Armed Forces of Colombia (FARC) and, on one occasion, to paramilitary groups, while it makes no specific mention of the protection of the beneficiaries.

8. That, based on the information provided by the State, the representatives, and the Commission, the President considers that the Court requires further information about the measures adopted specifically to protect the lives and safety of the beneficiaries of the provisional measures, in order to monitor the satisfactory implementation of these measures and to ensure the effective protection of the beneficiary civilian population.

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9. That the representatives alleged that a plan exists to murder Enrique Petro, inhabitant of the Curbaradó humanitarian zones, together with "members of the national and international community who accompany him." The representatives indicated that this plan has been preceded by threatening military raids in several humanitarian zones and by the destruction of the signs identifying the communities that inhabit them. In this regard, the representatives stated that the threats to Mr. Petro Hernández continued, that the State's response had not been addressed specifically against those responsible, and that they were unaware of any measures taken, or of the individualization and eventual prosecution of those responsible. In addition, the representatives reported several events that had occurred between April and September 2006, and denounced before the Inter-American Court various acts of harassment and coercion against the beneficiaries of the provisional measures allegedly carried out by different palm oil firms, apparently supported by alleged paramilitary groups and by the Police. According to the representatives, the main purpose of these acts was to force the inhabitants of the Communities to abandon their lands.

10. That, in this regard, the State has reported that measures have been coordinated to counteract the acts denounced by the representatives; these measures include search and inspection operations in the urban and rural areas of Belén de Bajirá. In addition, the State indicated that it had requested that, in the event such acts were corroborated, procedures should be implemented to individualize and prosecute the members of the criminal band that perpetrated them. In addition, it reported that the Commander of the Urabá Police Department, through the Bajirá Police Station, had adopted all pertinent actions to guarantee the life and safety of Mr. Petro Hernández and his family. The State also indicated that, the procedure of receiving the testimony of Mr. Petro Hernández had been conducted at the Belén de Bajirá Police Station, and he had stated that "there had been no threats against his family; he had merely heard comments that there would be an attempt on his life," and he had not reported these facts to any State security agency.

11. That, in response to the events reported by the representatives, the President considers it pertinent that both the representatives and the State submit further information in this regard, in order to guarantee the adequate and effective protection of those who allege that their life and safety are in danger.

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12. That the Court ordered the State, pursuant to the provisions of the American Convention, to grant special protection to the so-called "humanitarian refuge zones" established by the communities composed of the Community Council of the Jiguamiandó and the families of the Curbaradó and, accordingly, to adopt the necessary measures to ensure they receive all the humanitarian aid sent to them (*supra* first having seen paragraph). In this regard, the State has referred to the "At-risk Communities Project," which "is intended to increase the level of the safeguard of human rights in these communities, strengthening the capacity of State institutions to provide protection, at the local, regional and national level, and bolstering the relations between the communities and the authorities." The State reported that Urabá was one of the five areas chosen to implement this project; this area included, among other places, the municipality of Carmen de Darién, where the communities that are the beneficiaries of these provisional measures have settled.

13. That, in this regard, the representatives have indicated that the said project does not include the beneficiaries of these provisional measures and that “[...] no diagnosis has been made of the humanitarian situation of the Jiguamiandó and the Curbaradó Communities, nor have proposals for prevention and protection plans been agreed on.” In addition, they said that the State had not provided humanitarian aid to these Communities and that the measures to which the State had been referring in its reports had been provided to other inhabitants. In any event, the representatives considered it important that the humanitarian aid should be delivered to the beneficiary communities by the relevant institutions of the National System for Integral Attention to the Displaced Population (“SNAIPD”) and not by military personnel, in order to respect the decision of these Communities not to become involved in the armed conflict.

14. That, in its observations, the Inter-American Commission considered that the State had not provided information on the measures adopted to comply with its obligation to provide special protection to the “humanitarian refuge zones.”

15. That, based on the above, the Court requires the State to provide further information on this point, in the terms of the fourth operative paragraph of the Order of March 6, 2003 (*supra* first having seen paragraph).

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16. That, with regard to the measures to guarantee the necessary security conditions so that the beneficiaries of these provisional measures who have been forced to displace may return to the place they came from, the State emphasized that the return of these people should be conducted within the framework of specific protocols and that the Communities should await the outcome of the administrative procedures initiated by the Colombian Rural Development Institute (INCODER) concerning demarcation, because it was not the State’s policy to support a *fait accompli*. In this regard, the State indicated that, through INCODER, it had awarded different areas of land in the jurisdiction of Carmen de Darién and Belén de Bajirá to the Jiguamiandó and the Curbaradó Community Councils, and that the work of ICODER was addressed, above all, at recovering land that has been illegally occupied and recognizing authentic titles. Regarding the alleged activities of the cultivation of oil palm and livestock farming on the lands of these Community Councils, the State reported that it was carrying out the delimitation and demarcation of any private land that might be located in the said areas, in addition to the collective lands awarded to the communities of African descent organized into the Community Councils of the valleys of the Jiguamiandó and Curbaradó Rivers. The State attached documentation in this regard.

17. That, in their observations, the representatives indicated that, during the course of paramilitary operations, “third parties, in other words palm oil entrepreneurs, using pressure by the paramilitary groups, fraud and forged documents, [were allowed] to prove hypothetical private property rights over lands within the territory of the Curbaradó and the Jiguamiandó” on which palm trees had been planted illegally. Moreover, the representatives considered that the State had used the argument of the complexity of verifying the legal ownership of the land in order not to support the return of the members of these Communities, instead of considering the principle of security. The representatives also indicated that the return of various communities to specific territories did not constitute a *fait accompli*, but rather to a return to their places of origin; consequently, they considered that the “[...] institutional negligence in solving the problem of the illegal appropriation of property, the continuing increase in the cultivation

of palm trees, in deforestation and desertification, and in the extraction of the palm fruit, cause them to return in order to exercise their property rights.”

18. That the Commission stressed that the completion of the process of delimiting and demarcating the collective territories of the beneficiary communities is closely related to the persistence of the risk factors for the beneficiaries.

19. That, based on the information provided by the State, the representatives, and the Commission, the President considers that the Court requires further information on the measures adopted to guarantee the necessary security conditions for the beneficiaries of these measures who have been forced to displace to return to their homes or to the “humanitarian refuge zones.”

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20. That, regarding the establishment of a preventive monitoring system for the communication system assigned to the communities that are the beneficiaries of these provisional measures, the State reported that the Ministry of the Interior and of Justice had decided to coordinate with the communities the proposed Strategic Plan to implement the early warning system and to coordinate the delivery of the satellite equipment.

22. That the representatives indicated that there had been no coordination activities with regard to the Strategic Plan, even though the beneficiaries had requested this repeatedly.

23. That the Inter-American Commission considered that this obligation had not been complied with as effectively as possible, in light of the situation of the beneficiaries.

24. That the President considers that both the State and the representatives must submit precise information on progress in the implementation of the continuous monitoring and permanent communication mechanism in the so-called “humanitarian refuge zones,” in the terms of the sixth operative paragraph of the Order of March 6, 2003 (*supra* first having seen paragraph).

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25. That, on December 20, 2006, and October 1, 2007, 32 families from Pueblo Nuevo and Puerto Lleras, and 177 families from the Curbaradó Community Council, respectively, asked the Inter-American Court to accredit their own representatives in relation to the provisional measures granted to 515 families in this matter; to this end, the two groups designated two people to represent them. Both groups disown and reject representation by the Inter-congregational Justice and Peace Commission and ask to be granted the same guarantees that are being provided to other displaced persons to enter the “humanitarian zones” represented by that organization, as well as to be able to negotiate directly with the State in order to coordinate measures that benefit them.

26. That, in this regard, the representative accredited to the Court indicated that he did not represent these 32 and 177 families, who had not been presented as a specific target population for the measures requested by that organization, and that he only represented 161 of the 515 families that are beneficiaries of the provisional measures.

The representative said that he did not dispute the right of these families to request the necessary measures of protection, but he was acting based on the specific voluntary acceptance of the 161 families that are beneficiaries of the provisional measures.

27. That the State informed the Court that it had received various requests from people who say they represent these families asking that their representation be accredited. In this regard, it asked the Court to indicate the names of the beneficiaries of the provisional measures in order to proceed to implement these measures appropriately. In this regard, in a communication of December 6, 2007, the Court asked the Inter-American Commission and the representative to submit their observations on the State's request concerning the individualization and identification of the beneficiaries and their representatives, as well as the petition for "self-determination," by January 2 and 16, 2008, at the latest, respectively. On the date this Order is issued, the time granted for presenting these observations has not yet expired.

28. That, in matters such as this, the Court has ordered the protection of a plurality of people who have not been named previously, but who can be identified and determined and who are in a situation of grave danger because they belong to a group or community.¹ In view of the request for "self-representation" submitted by the 32 and 177 families (*supra* sixth having seen paragraph), the President considers it extremely necessary that the parties provide clarification to the Court in order to determine and identify the plurality of people who make up the families that are the beneficiaries of these provisional measures, together with those who represent the families that have asked to be represented.

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29. That Article 25(7) of the Court's Rules of Procedure establishes that:

The Court, or its President if the Court is not sitting, may convoke the parties to a public hearing on provisional measures.

30. That, regarding hearings, Article 14(1) of the Rules of Procedure stipulates that:

Hearings shall be public and shall be held at the seat of the Court. When exceptional circumstances so warrant, the Court may decide to hold a hearing in private or at a different location. The Court shall decide who may attend such hearings. Even in these cases, however, minutes shall be kept in the manner prescribed in Article 43 of these Rules.

31. That, based on the foregoing, the President, in consultation with the judges, considers it necessary and opportune to convoke a public hearing to listen to the allegations of the Commission, the representatives, and the State about, *inter alia*: (a) the measures adopted to protect the lives and safety of all the members of the communities composed of the Community Council of the Jiguamiandó and the families of the Curbaradó; (b) the measures adopted to ensure that the persons benefiting from these measures may continue living in their place of residence, free from any kind of coercion or threat; (c) the special protection to the so-called "humanitarian refuge

¹ Cf., *inter alia*, *Matter of the Peace Community of San José de Apartadó regarding Colombia*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of November 24, 2000, seventh considering paragraph; *Matter of Children Deprived of Liberty in "Complexo do Tatuapé" of FEBEM regarding Brazil*, Provisional measures. Order of the Inter-American Court of Human Rights of November 30, 2005, sixth considering paragraph; and *Matter of the Jiguamiandó and the Curbaradó Communities*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of February 7, 2006, eighth considering paragraph.

zones" established for the beneficiary communities; (d) the establishment of the necessary security conditions so that the members of the beneficiary communities who have been forcibly displaced may return to their homes or to the "humanitarian refuge zones" established for these communities; (e) the establishment of a continuous monitoring and permanent communication mechanism in the so-called "humanitarian refuge zones," and (f) the determination of the plurality of persons who comprise the families that are the beneficiaries of these provisional measures and the representation of the families who have requested it (*supra* twenty-fifth considering paragraph).

THEREFORE:

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

in exercise of the authority conferred by Article 63(2) of the American Convention on Human Rights, Article 25(2) of the Court's Statute, and Articles 4, 25(7) and 29(2) of the Court's Rules of Procedure, in consultation with the judges of the Court,

DECIDES:

1. To convoke the Inter-American Commission on Human Rights, the representative of the beneficiaries of these provisional measures and the State of Colombia to a public hearing to be held at the seat of the Court of February 5, 2008, from 9 a.m. to 11 a.m., for the Court to hear their arguments concerning the implementation of the provisional measures ordered in this matter, in accordance with the thirty-first considering paragraph of this Order.
2. To notify this order to the Inter-American Commission on Human Rights, the representative of the beneficiaries, and the State of Colombia.

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary