

**Order of the
Inter-American Court of Human Rights
of April 3, 2009
Provisional Measures
Regarding the Republic of Colombia
Matter of Pueblo Indígena de Kankuamo**

HAVING SEEN:

1. The Order issued by the Inter-American Court of Human Rights (hereinafter, the "Court", "the Inter-American Court" or the "Tribunal") on July 5, 2004 by which the Court adopted these provisional measures.
2. The Order issued by the Inter-American Court on January 30, 2007 in relation to these provisional measures.
3. The briefs of May 22, 2007; October 4, 2007 and May 7, 2008, by which the Republic of Colombia (hereinafter, the "State") presented information in relation to the compliance with the provisional measures ordered in this matter.
4. The communications of March 31, 2007 and April 16 and 21, 2008, by which the representatives of the beneficiaries of the provisional measures (hereinafter, the "representatives") submitted relevant information on this matter and observation to the State's reports (*supra* Having Seen clause 3).
5. The briefs of March 29, 2007 and May 14 and July 17, 2008, by which the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") submitted information in relation to the compliance with the provisional measures so ordered and the observations to the State's reports (*supra* Having Seen clause 3).
6. The Order of the President of the Court (hereinafter, the "President") issued on October 7, 2008 by which he convened the parties to a public hearing in order for the Tribunal to obtain information on the implementation of the provisional measures ordered in this matter.
7. The public hearing held on December 4, 2008 within the framework of the XXXVII Period of Extraordinary Sessions of the Inter-American Court. In the course of said hearing, the State, the Commission and the representatives informed on the implementation of the provisional measures and, at the request of the Tribunal, they agreed to hold meetings to come to an understanding in relation to these provisional measures.
8. The communication of December 10, 2008 whereby the Secretariat of the Court, following the instruction of the President, requested the State and the representatives to inform, no later than January 15, 2009, the Tribunal on the measures adopted to carry out a meeting in order to discuss the possibility of coming to an understanding between the parties (*supra* Having Seen 7).
9. The brief of January 27, 2009 by which the representatives presented information on new facts in relation to the provisional measures so ordered.

10. The communications of January 27 and March 10, 2009 by which the State forwarded information on the new events that occurred in relation to the provisional measures and on the organization of a meeting with the beneficiaries and the representatives to implement the provisional measures (*supra* Having Seen clause 7).

11. The note of February 27, 2009 by which the Commission submitted the decision of the Constitutional Court of Colombia of January 26, 2009, related to the situation of forced displacement and indigenous communities in Colombia.

CONSIDERING:

1. That Colombia is a State Party to the American Convention on Human Rights (hereinafter, the "American Convention" or the "Convention") since July 31, 1973, and it recognized that competence of the Court, in keeping with 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 regard to a case not yet submitted to the Court, it may act at the request of the Commission".

3. That in relation to this issue, Article 26 of the Rules of Procedure¹ establishes that:

[...]

2. With regard to a matter not yet submitted to the Court, it may act at the request of the Commission.

[...]

7. The monitoring of provisional or urgent measures ordered shall be carried out by means of the submission of State's reports and the filing of the corresponding observations to those reports by the representatives of the beneficiaries². The Inter-American Commission of Human Rights shall present observations to the State's report and to the observations of the beneficiaries of the measures or their representatives.

4. That the provisional measures are of an exceptional nature and are issued depending on the need for protection. Once they are ordered, they should be maintained as long as the Court believes that a situation of extreme gravity and urgency persists and when necessary to avoid irreparable damage to persons protected by them.

5. That according to the provision established in Article 63(2) of the Convention, provisional measures ordered by the Court are binding on the State in conformity to a basic principle of the law of international responsibility of the States, as supported by international case law, under which States are required to comply with international treaty obligations in good faith.³

¹ In accordance with the Rules of Procedure partially amended by the Inter-American Court of Human Rights during its LXXXII Period of Ordinary Sessions, held from January 19 to 31, 2009.

² Added by the Court during its LXXXII Ordinary Period of Sessions, in the session held on January 29, 2009.

³ Matter of *James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of June 14, 1998, Considering clause 6; Matter of *Carlos Nieto Palma et al.* Provisional Measures regarding the Bolivarian Republic of Venezuela Order of the Court of January 26, 2009; Considering clause two and Case of Mack Chang et al. Provisional Measures regarding Guatemala. Order of the Court of August 26, 2009, Considering clause 3.

6. That pursuant to the Orders of the Inter-American Court of July 5, 2004 and January 30, 2007 (*supra* Having Seen clauses 1 and 2), the State must, *inter alia*: a) maintain and adopt all measures necessary to continue to preserve the life, personal integrity and personal liberty of all members of the Kankuamo indigenous community; b) continue to investigate and inform the Court about the facts that gave rise to the present provisional measures; c) continue to guarantee the conditions of security necessary to ensure respect for the right to freedom of movement of the Kankuamo indigenous community, as well as of those who have been forced to flee to other regions, so that they may return to their homes if they so desire and d) continue to allow the participation of the beneficiaries in the planning and implementation of these provisional measures, and that, in general, the beneficiaries shall be informed about the progress of such measures.

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7. That the monitoring of the implementation of the provisional measures and the need to maintain them calls for an evaluation of the existence of situations of extreme gravity and urgency that gave rise to those measures. This involves examining the facts that occurred during the enforcement of the provisional measures and the risk that such facts represent for the effective enjoyment and exercise of the rights enshrined in the American Convention.

8. That in several briefs, the representatives have referred to facts that occurred during the enforcement of these provisional measures, among them:

a) In the brief of March 31, 2007 (*supra* Having Seen clause 4), they informed the Court on the detention in solitary confinement of Mrs. Carolina Isabel Sequeda Arias, beneficiary of these provisional measures and they noted that the authorities did not allow her having contact with her lawyer and next-of-kin and that they failed to mention the reasons of her detention;

b) In the communication of April 16, 2008 (*supra* Having Seen clause 4) they informed the Tribunal on the alleged threats committed against Mrs. Silsa Matilde Arias Martínez and Mr. Luis Fernando Arias Arias, beneficiaries of these provisional measures;

c) In the brief of April 21, 2008 (*supra* Having Seen clause 4) and in the public hearing (*supra* Having Seen clause 7) they informed the Tribunal on certain facts that occurred after the issuance of the Court's Order on January 30, 2007 (*supra* Having Seen clause 2), among them, threats, murders, deprivation of liberty without the compliance with legal requirements and forced disappearances, of which the victims, members of the Indigenous Community of Kankuamo and beneficiaries of these provisional measures, have been victims;⁴

⁴ The representatives mentioned, among other facts, that:

1. Several leaders of the Kankuamo Organization, some of them living in Valledupar and others who are displaced living in the city of Bogotá, among them, Mr. Wilmer Daza Ariza, Imer Villazón Arias, Daniel Maestre and José Apolinar Arias and his family, have been threatened. Furthermore, Indira Mendiola, Women Coordinator of the Organization, has been threatened by the national army after a meeting to follow-up the provisional measures. Furthermore, several pamphlets have been distributed containing death threats addressed at Luis Fernando Maestre and José del Carmen Paso Maestre, who were given fifteen days to abandon the reserve zone and the city of Valledupar;

d) In the brief of January 27, 2009 (*supra* Having Seen clause 9) they informed that on December 31, 2008 five members of the Kankuamo indigenous community lose their lives, namely: Gloria Lucía Arias, Marelvis Mindiola Díaz, María Teresa Arias Cáceres, Azael Arias Pinto and Erika María Fuentes Pino and at least 60 people would have been injured; 10 of them were seriously injured, as a result of the explosion of a grenade while they were gathered in a festivity in the *corregimiento* (*departamental division*) of Atanquez, Municipality of Valledupar, at an establishment called "Patio Fresco" at 100 meters of the National Police Station, and

e) In the briefs presented and the public hearing (*supra* Having Seen clause 7), the representatives informed, among other facts, that: i) anti-personnel mines have been found in the highway that communicates the Antaquez communities to Guatapuri and Chemesquemena communities. The risk entailed is that, despite the authorities know these locations, they do not warn the community by means of the indigenous authorities or deactivate or explode the mines immediately; ii) the presence of the Army in the territory has generated, among other situations: violence against women;⁵ "settlement of troops in the area of civilian population such as schools and families' homes, the unduly use of vehicles that transport civilians" and y "hooded persons who, together with the Army, have threatened and intimidated the population in general"; iii) there is a very serious conflict between the traditional authority in its territory and the *corregidores* (*justices of the peace*), which affect the acknowledgment of their culture, their autonomy, and the respect for the cultural and ethnical diversity; and iv) the National Indigenous Organization of Colombia (ONIC) "presented an early intervention to the Ombudsman [...] [before] the presence of a paramilitary group called 'Black Eagles' [Águilas Negras] at the high area of the region of Murillo [...]. Likewise, other declarations of the Ombudsman suggest [that] these groups, [...] called Gaitanista Self-Defense group of César Department [*autodefensa gaitanista del César*], [...] represent a threat [in], at least, [...] eight departments of the country". Besides, "the presence of *Frente 59* of the FARC continues in the high area of the Reserve Zone, who keeps threatening the civil population, which is seen,

2. Nine Kankuamo indigenous people were murdered, namely: "José Trinidad Martínez Pacheco, Yendris Rodríguez Arias, José Arturo Rodríguez Montero, Esneider Jair Carrillo Pavón, Víctor Guillermo Villasal Maestre, Janer Mendiola Martínez, Juan Carlos Arias Montero, José Ramírez and Richard Londoy". Likewise, "Freddy Alberto Oñate Carrillo and Rafael Montero, who belonged to armed groups and were part of the reintegration into the civil life program, were also murdered". Lastly, they informed that, three days before the public hearing, two young Kankuamo members were murdered in Valledupar;

3. Three Kankuamo indigenous people have been victims of disappearance: Eliberto Enrique Rodríguez Mestre, Luis Eduardo Guerra Luques and Juan Carlos Arias Montero. The latter was extra judicially executed by the National Army and presented as discharged from combat;

4. On November 2, 2007, members of the National Police, at the request of the Financial Resources Unit Force, attached to the Public Prosecutor Office 10, arrested Juan Baldomero Carillo, José Enrique Arias Montaña, José Isaías Carillo, Freider Rafael Montero and Nelsón José Montero, without complying with formalities. These raids are still being carried out without previous notice and coordination with the authorities of the Kankuamo Indigenous Reserve Zone and, in most cases, the arrested persons are released or acquitted due to lack of evidence corresponding to the crime they are charged with.

5. On November 18, 2007 Mr. José Amiro Arias was captured in an operation of the National Army, even though it was not the competent authority to order that and without compliance with the formalities. "The Mamo Arias is a man of almost 70 years of age, who suffers from hypertension and even though [...] is confined in the dungeon of CTI, and the justice has not considered that this matter should be subjected to indigenous special jurisdiction".

⁵ According to the statement made by the State at the public hearing of December 4, 2008, "in case of a violation there is but a complaint".

in turn, as a military objective for being, according to them, collaborators of the law enforcement personnel that is present in the Kankuamo territory”.

9. That the Inter-American Commission, in addition, informed on the facts that occurred during the enforcement of these provisional measures and presented observations to the State’s reports, indicating, *inter alia*:

a) That on March 31, 2007, Mrs. Carolina Isabel Sequeda Arias, beneficiary of these provisional measures, was detained in solitary confinement:

b) In the brief of May 14, 2008 (*supra* Having Seen clause 5) it emphasized its concern for the death of José Trinidad Pacheco and deemed it was pertinent for the State to inform, specifically, on said fact in the next report;

c) In the brief dated July 17, 2008 (*supra* Having Seen clause 5) it pointed out that the information provided by the State failed to prove whether the measures aimed at providing protection to Mr. Luis Fernando Arias and Silsa Matilde Arias Martínez had been effectively implemented;

d) In the public hearing, it mentioned that it is a fact of public knowledge that in the region where the Kankuamo live, illegal groups such as the one called "Black Eagles" continue doing operations and that in the last time, the so-called Gaitanistas Self-Defense Groups of Colombia have emerged. Besides, "the *guerrilla* continues operating in the area". Especially, it is evident the threat the so-called "Black Seals" represents inasmuch as a group of search for such criminal group has been created within the State itself" and,

e) That in "the recent visit to Colombia made from November 17 to 21, 2008, the Commission received information on the ongoing threats committed against members of the Indigenous National Organization of Colombia, including members of the Kankuamo Community, by these illegal groups”.

10. That the State, in addition, informed, *inter alia*:

a) In the brief of May 22, 2007 (*supra* Having Seen clause 3) that Mrs. Sequeda Arias was arrested after performing "logistics roles within the rebel organization [Revolutionary Armed Forces of Colombia] FARC", and she was held possible responsible for the crimes of extortion and rebellion". Furthermore, the State pointed out that "Mrs. Sequeda signed the Declaration of the Rights of Arrested People [*Acta de Derechos del Capturado*] expressing that she did not receive any oral or physical ill-treatment" and that "on May 11, 2007 [...] she rendered a preliminary examination statement before the Prosecutor and she denied all charges brought against her";

b) In the brief of May 7, 2008, in relation to the threats committed against Mrs. Silsa Matilde Arias Martínez and Mr. Luis Fernando Arias Arias, the State (*supra* Having Seen clause 3), within the framework of a meeting to follow-up the provisional measures issued on April 4, 2008, agreed to adopt special protective measures in favor of Mr. Luis Fernando Arias, who was assisted by the Committee of Rules and Evaluation of Risk [*Comité de Reglamentación y Evaluación de Riesgos*] on April 10, 2008. Said Committee recommended the granting of a mobile phone and a special tracking system. Moreover, the "Protection Program requested the Interinstitutional Commission of Technical Studies of the Ministry of Domestic Affairs and Justice to

conduct an urgent Technical Study on the Level of Risk and Type of Threat for Mr. Luis Fernando Arias and Mrs. Silsa Arias". Finally, it informed that Mrs. Silsa Arias "has not filed a specific petition as to the material measures she is requesting";

c) In the public hearing, that "in the meeting held in September [of 2008] the petitioners and the beneficiaries [...] forwarded information regarding the four deaths that occurred in the Kankuamo Community during the year 2008 [,in relation to which] the Attorney General's Office is conducting [an] investigation". Nevertheless, the State pointed out that "a serious and impartial investigation has [already been] conducted on one of these deaths [that occurred] on September 3, in which the Law Enforcement Personnel was involved". "[T]he other deaths have the characteristic of not having occurred within the Kankuamo [...] territory: [...] one of the dead people is a police sergeant of the Army, member of Kankuamo law enforcement personnel, who has taken a leave from his position [and] died in an incident; another one was a public official of the Kankuamo territory and was murdered in an incident that is still under investigation, which even caused the creation of a security council in the region [...]; and the other one was a collaborator of Kankuamo law enforcement personnel who, seems to be, was murdered by the FARC and in this event, there are another three people involved". In this sense, the State pointed out that "it seems that none of these four cases are related to the facts that gave rise to the provisional measures in the year 2004";

d) In the brief of January 27, 2009, that "it regretted the death of 5 Kankuamo indigenous people and the injuries suffered by another sixty-four (64) indigenous people and [...] offered it sympathy to the next-of-kin and friends". Moreover, it stated that "a special commission of the Attorney General's Office, [has relocated] in order to conduct investigation proceedings" and

e) In the public hearing (*supra* Having Seen clause 7), the State informed that, regarding the protection of life and personal integrity of the members of the Indigenous Community of Kankuamo, the following progress has been made:

i) the training for officers, non-commissioned officer and soldiers in special jurisdiction and rights of indigenous people was permanently included;

ii) soldiers attend an educational center twice a year, for fifteen days each time, in order to participate in seminars and workshops on indigenous legislation;

iii) a booklet called "the Indigenous People" has been created and such booklet explains the legislation that must be applied when entering the indigenous territory or having a problem with some indigenous person;

iv) a "senior officer was appointed in order to play the role of liaison with the indigenous governors", in order to "build [a] bridge of communication to [improve] the relationships between the Law Enforcement Personnel and the Indigenous Community";

v) the Ministry of Defense created the Ministerial Policy of Protection of Indigenous communities that, among other things, sets forth the respect of the authorities in their territories; the maintenance of a proper collaboration between authorities of the Law Enforcement Personnel and the indigenous authorities; and the strict compliance with the exemption of the young indigenous people from military service;

vi) regarding the territory, the necessary measures to deter illegal armed groups and respect, in particular, the places of spiritual and cultural practices that constitute sacred territories for the indigenous people have been adopted;

vii) "the paramilitary officers have disappeared [from] the area and the *guerrilla* has had an important setback. The groups that have emerged are groups of a nature different [from the] one the Government was facing". In that respect, it mentioned that "a meeting was held with the Commander of the Second Division of the area, the Governor and the Commander of the Tenth Brigade in order to evaluate the information regarding these groups and adopt measures to develop the necessary activities to dismantle them once and for all"; and

viii) regarding the alleged sexual harassments committed by the Army, the State only has a complaint for the crime of violation, therefore, "in the meetings the State has held with the Kankuamo authorities, it was resolved that such situation occurred by mutual consent". Nevertheless, it mentioned that it is possible to organize with the Kankuamo authorities some sort of training in this area by means of the Colombian Institute of Family Welfare [*Instituto Colombiano de Bienestar Familiar*] that works with a special education policy on sexual and reproductive rights.

11. That this Tribunal values the efforts made by the State to provide protection to the beneficiaries of these provisional measures. Nevertheless, the information forwarded in relation to the serious facts that occurred during the year 2007 (*supra* Considering clause 8(c)) and on December 31, 2008 (*supra* Considering clause 8(d) and 10(d)), which refer to the loss of life and the impairment to the personal integrity of the members of the Indigenous Community of Kankuamo, as well as the threats towards the leaders of said Community (*supra* Considering clauses 8(b), 9(c), 9(e) and 10(b)), reveals that still exists a situation of extreme gravity and urgency regarding the rights to life, human treatment and personal liberty of the beneficiaries.

12. That it is necessary for the State to adopt all effective preventive measures possible to prevent events as the ones informed by the representatives, the Commission and even the State itself, from continuing taking place. The Court considers it is essential that the State adopts effective measures to protect the life and personal integrity of those who play the roles of representatives or leaders of the Indigenous Community of Kankuamo.

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13. That, in relation to the investigation into the facts that sustain the maintenance of these provisional measures, the State, in its reports (*supra* Having Seen clause 3) and in the public hearing held on December 4, 2008 (*supra* Having Seen clause 7), informed that:

- a) The Attorney General's Office designed an investigation strategy to expedite the cases of which members of the indigenous community of Kankuamo have been victims; the strategy aims at creating commissions *in situ*. In this sense, two stimulation commission have been created: the first one, from May 7 to June 8, 2007 and the second one, from November 8 to 22, 2008;

- b) In the first phase, 33 officers of the Attorney General's Office were crowd out: five public prosecutors of the Human Rights Division; five assistants of the Prosecutor Offices and twenty investigators, two officers for the technical support room and an analyst expert in criminal profiles. In this opportunity, 84 cases were heard; 71 of them that were being investigated by the Sectional Prosecutors' Offices of the place where the facts occurred and thirteen had been already submitted to the National Human Rights Division.⁶ As a result: i) 37 investigations were opened; ii) 29 arrest warrants were announced; and iii) 14 accused people were bound over to trial as alleged responsible, and orders for 13 persons to be held in preventive detention were issued. Furthermore, at the end of this mission, the National Human Rights Division took on 49 cases and 22 cases were remanded to the Sectional Prosecutors' Offices.
- c) In a second phase, two prosecutors and a group of investigators were crowd out: i) thirty-eight cases were expedited; ii) four proceedings were commenced; iii) thirty-three people were bound over to trial as responsible; iv) four arrest warrants were enforced and v) eleven people were bound over to trial in order to render preliminary examination statements;
- d) On the date of the public hearing, the Human Rights National Division had taken over 61 cases: 35 cases are being formally investigated; two cases have been brought to trial and four condemnatory judgments have been delivered. Likewise, there are fourteen people under arrest and 28 preliminary proceedings involving people under arrest;
- e) In relation to the convictions of the responsible, the following results were obtained: i) Leonardo Enrique Sánchez Barboza, also known as *El Paisa*, has been apprehended; he was the military commander of the United Self-Defense Forces of Colombia (AUC) [*Autodefensas Unidas de Colombia*], illegal armed group which has been held responsible for most of the crimes of which the Kankuamo indigenous people have been victims; ii) on June 23, 2008, Mario José Fuentes Montaña and Heider José Fuentes Montaña were convicted to a term of forty years of imprisonment for the deaths of Farid Patricio Arias Maestre and Paulino Alberto Martínez and to another term of forty years for the deaths of four Kankuamo indigenous people; and iii) on April 18, 2008 eight military officers were convicted to a term of forty years for the death of José Nehemías Taza; and
- f) Regarding the extraditions, the "Colombian State has made an effort together with the American authorities in order for [the] [extradited] people continue collaborating with the process to shed light on the facts".

14. That, in such regard, the representatives emphasized in the public hearing (*supra* Having Seen clause 7) that they value the great effort made by the State regarding the investigation into the facts in which members of the Indigenous Community of Kankuamo have been victims; however, they noted that: a) no investigation has been conducted in relation to displacement, in spite of being one of the most serious impairments that the Kankuamo people suffer; b) there is no judicial investigation into the threats committed

⁶ The State, in its communication of October 4, 2007 pointed out that "the chosen proceedings to include in the investigation strategy [...] are seventy-six (76) corresponding to the Sectional Office of Valledupar, department of Cesar, together with 12 investigations of the National Human Rights and International Humanitarian Rights Division and 12 investigations into the facts informed by the Kankuamo Indigenous Organization (OIK), amounting to a total of A HUNDRED (100) investigations".

against the leaders of the Kankuamo Indigenous Organization; c) there is no proceeding initiated against the perpetrators of the facts that gave rise to these measures; d) there is no complete investigation or systematic evaluation of the facts that are occurring in the Kankuamo territory and e) the extradition to the United States of America of the two paramilitary commanders for the crime of drug-trafficking has caused a delay to know the truth of the facts that generated the adoption of these provisional measures.

15. That the Inter-American Commission in the public hearing held (*supra* Having Seen clause 7) acknowledged the significant progress made by the special commission of investigation and stimulation (*supra* Considering clause 14(a)); nevertheless, it pointed out that "most of the murders of the members of the Indigenous Community of Kankuamo have been committed by members of paramilitary groups and some of them are fugitives or have been extradited"; therefore, it considered that "greater efforts are needed in order to investigate, prosecute and punish the responsible for the hundreds of crimes committed against members of the Kankuamo Community".

16. That Article 1(1) of the Convention establishes the general obligations of the State Parties to respect the rights and freedoms therein enshrined and to ensure the full and free exercise of those rights and freedoms to every person subject to jurisdiction; such obligations are binding not only on States but also on third parties.⁷ That the duty to guarantee, in particular, implies the obligation to investigate into the facts that violate the human rights enshrined in the Convention.

17. That the Tribunal values and acknowledges the effort made by the State in the investigation into the facts and also the efforts made by the "stimulation commission" created to such end. In this sense, it deems it is necessary that the State continues informing on the progress made in said investigation into the facts that gave rise to these provisional measures and are the cause to maintain them.

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18. That the representatives pointed out in the public hearing (*supra* Having Seen clause 7) that, in relation to the displacement, "the situation presented in the hearing held in January 2007 still exists and in spite of the multiple commitments undertaken in the eight meetings referred to by the State [...], these commitments have not been fulfilled: The situation of the returned people has not been properly handled; [...] the protection order issued in favor of the leaders who were displaced in the city of Bogotá has still not been complied with and there is a general concern about the occurrence of new forced displacement". Moreover, they proposed to "organize [...] a special meeting to discuss [the issue of the displaced Kankuamo people]" with the participation of national and local State authorities in order for them to undertake a real and specific commitment.

⁷ Cf. *Case of the Massacre of Pueblo Bello v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 113; *Case of Valle Jaramillo et al v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 73; *Matter of Rodeo I and Rodeo II Capital Judicial Confinement Center regarding Venezuela*. Provisional Measures. Order of the Court of February 8, 2008, Considering Clause 11; and *Case of Ríos et al. v. Venezuela*. Preliminary objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 110.

19. That the Commission, in its communication of May 14, 2008 (*supra* Having Seen clause 5) repeated “the need to count on detailed information about the measures aimed to lighten the situation of the displaced people [...] and make their safe return possible”.

20. That the State in the public hearing (*supra* Having Seen clause 7) informed that “[forced] displacement is the more serious massive violation present in Colombia and, hence the Colombian State has made some changes such as allocating 500 millions dollars, per year, instead of 35 millions dollars, of the budget to assist the displaced population”. It also asserted that before this situation, “the [...] Constitutional Court has delivered Judgment T-025 in the year 2004 [...] by which it was declared the unconstitutionality in terms of displacement”. Furthermore, the State mentioned that “Colombia has sufficient domestic mechanisms to handle the issue of the displaced population”. Finally, the State communicated that, by the Ministry of Foreign Affairs, it will forward a “very complete report on the assistance to displaced population [and on] the measures it has adopted [regarding] the return of Murillo and Rioseco to the area”. Up to the date of the delivery of this Judgment, said report has not been received.

21. That the judicial authorities of the State has acknowledged the deficiencies in the progress of an adequate policy for the assistance to the displaced community; which is more serious for the indigenous communities as the Kankuamo community, whose members are beneficiaries of these provisional measures. The Second Review Chamber of the Colombian Constitutional Court, by means of Court Record N° 004 of January 26, 2009, delivered a decision within the “framework of the unconstitutional situation declared in judgment T-025 of 2004” (*supra* Having Seen clause 11) by means of which it examined the situation of risk generated in several indigenous communities by the forced displacement, including the Indigenous Community of Kankuamo. In such regard, the Second Chamber indicated, *inter alia*, that:

The Colombian armed conflict represents a threat to the cultural and physical extinction of several indigenous people of the country. [...] [The] armed conflict, reoriented for activities related to drug-trafficking, that exists in Colombia has turned into the main factor of risk for the existence itself of dozens of indigenous communities and people within the entire national territory [...]. This threat has been the main cause of displacement of indigenous people.

Everyone who has been part of this armed conflict- mainly *guerrilla* groups and paramilitary groups and also, on occasions, units and members clearly identified with the law enforcement personnel, as well as criminal units linked to different aspects of the domestic conflict- participate in a complex war pattern that, after having entered into ancestral territories of some indigenous people that live in the country thanks to the weapons, has turned into a certain and present danger for the existence of such people, for their individual processes of ethnical and cultural consolidation and for the effective enjoyment of the individual and collective fundamental rights of their members.

The broad documentary evidence [...] leaves no room for doubt regarding the bloody and systematic way in which the indigenous peoples of Colombia have been subjected to conflicts of which they are totally aliens and as a result, they have claimed repeatedly, autonomously and impartially, the illegal armed groups to respect their lives, their integrity and their territory.

It is an emergency as serious as it is invisible. The authorities in charge of preserving and protecting the indigenous people of the country have not acknowledged yet the real dimensions of such process. [...]

A small group of indigenous individuals and communities have Inter-American measures- precautionary and provisional- of protection, in response to their brave efforts of mobilization and international visualization of their situation; nevertheless, as a general rule, these measures have been ineffective, have not alleviate the violence and in fact, the periods of greater exacerbation have taken precedence over time.

In many cases, there have been alerts and early warnings or risk reports, issued or prepared by the communities themselves, their organizations and leaders as well as within the Early Warning System of the Ombudsman; but, despite the notices, crimes have been committed or feared displacements have taken place before the honest indifference, passivity or impotence of the competent authorities.

[...] [Furthermore, it indicated that]

The indigenous forced displacement has its own forms and types: The ONIC has stated that the main forms of indigenous displacement are: (a) massive displacement from nearby municipal heads towards the cities; (b) progressive displacement –drop-by-drop [*gota a gota*]- towards the cities; (c) shifting displacement to other places of the territory, other communities or ethnical groups, and (d) displacement from territories that have not been constituted in reserve zones (*resguardos*) towards other reserve zones (*resguardos*),

The differential nature of the impact of forced disappearance on the indigenous peoples lies in the fact that it intermingles individuals facets with the collective ones, that is, it have destructive effects on the individuals rights of the people belonging to the impaired ethnical group, as well as on the collective rights of each ethnical group to autonomy, identity and territory. The individual and collective characteristics of the displacement offer reciprocal feedback and interact with each other. Besides, each ethnical group in particular have its own forced displacement patterns and its own specific situation, which must be acknowledged taking into account its seriousness to offer an appropriate response from the State. According to the terms of the intervention of the UNHCR in the hearing before the Constitutional Court, "the loss of control over the territory and the effective exercise of territorialism, affect the fundamental principles of life and coexistence that are the key for the establishment of identity, the domestic system of autonomy, control and governance, the production circuits and the dynamics of enculturation".

In this regard, it should not be disregarded that the relationship of the indigenous groups with the territory is essential for the cultural structures and its ethnical and material survival. The displacement causes acculturation, due to the disruption with the own cultural environment and the cultural shock. Displaced indigenous peoples live in a state of total disorientation due to the cultural and linguistic disruption implied in such displacement and the abrupt integration in urban and harsh environments of which they are not part.

Besides, the worst part is that the displacement causes the disruption of cultural continuity due to the subsequent acculturation of the young people and the corresponding halt of the socialization patterns that are essential for the survival of these ethnical groups. [...]

Another concerning facet of the forced displacement of indigenous peoples in Colombia is that, according to what has been put forward before the Constitutional Court, there is an extensive and constant pattern of permanent forced displacement of indigenous leaders and authorities that are threatened or insulted, which is devastating for the cultural structures. The main cultural role played by the authorities and leaders make their displacement into something even more harmful for the preservation of the social and ethnical structures of their respective peoples.

[...] [And it concluded that]

The answer of state authorities to the critical situation already demonstrated was given, mainly, by means of the approval of rules, policies and formal documents, which, despite their value, have had uncertain practical repercussions.

22. That, it spring from the foregoing that the members of the Kankuamo Indigenous Community keep living in a situation of forced displacement, despite the measures adopted by the State during the enforcement of these provisional measures. It follows that the State continues having the obligation to ensure, according to the American Convention, that the beneficiaries of these measures be able to keep living in their ancestral territory, without any type of coercion or threat, and that those who have been forced to move, be able to return, if they wish so.

23. That, taking into account the decision issued by the Constitutional Court of Colombia by means of the court order 004 of 2009 (*supra* Considering clause 21) and the agreement of the State (*supra* Considering clause 20), this Tribunal shall value the information that the

State alleges in terms of adoption of measures designed for the urgent and differentiated assistance of the displaced indigenous people that belong to the Kankuamo community.

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24. That, regarding the obligation to allow the beneficiaries to take part in the planning and implementation of the provisional measures, the State informed, in the public hearing (*supra* Having Seen clause 7) that it has conducted eight meetings to follow-up to commitments undertaken within the framework of the provisional measures; five of those meetings were conducted in the area of the Kankuamos and three of them, in Bogotá. Furthermore, in the brief of March 10, 2009 it indicated that on January 27, that same year, the State conducted a meeting with the representatives of the beneficiaries of these measures, in which it was determined the methodology to apply to "the preparation of an assessment of the situation of the Indigenous Community of Kankuamo". Moreover, they communicated that they shall inform on the progress of such meeting in due time.

25. That the representatives noted in the public hearing (*supra* Having Seen clause 7) that "eight meetings have been conducted but the authority of the indigenous people has not been respected and the commitments undertaken have not been fulfilled".

26. That the Commission indicated that the meetings between the State and the beneficiaries contribute to the compliance with the provisional measures and requested the State to forward updated and appropriate information on the compliance with the commitments undertaken.

27. That the Tribunal, in the course of the public hearing held, invited the State, the Commission and the representatives to reach a common understanding of the problem and a shared solution, considering the dimensions of the problems of protection and the guarantee of the rights of the members of the Kankuamo indigenous community that gave rise to the adoption of these measures.

28. That, in such regard, the representatives expressed that there is "the possibility of entering into a dialogue of cooperation and [making an effort to] keep working from the starting point of acknowledging the situation of risk and the existence of the parties' will to contribute with proposals to help overcome the situation".

29. That the State showed its will to try to come to an agreement and that, besides, considers it is a necessary step.

30. That the Commission expressed "its total availability to cooperate, accompany and monitor this process that has been creatively designed in order to offer a solution [...] but understanding that the main actors in the search for a solution is the State, mainly with the cooperation and participation of the petitioners and the beneficiary community".

31. That this Tribunal urges the parties to this matter to maintain the mediation criteria for the design of adequate strategies to alleviate the situation of extreme gravity and urgency that the members of the Kankuamo indigenous community have to face. The foregoing is vital in cases such as the present, due to the dimensions of the factor of risk, the universality of beneficiaries and their belonging to an ethnic minority.

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32. That the representatives stated in the public hearing (*supra* Having Seen clause 7) that they requested the maintenance of the provisional measures, since "even though the dimension of the problem has been reduced, the problem continues, [...] the Kankuamos continue being murdered, threatened and most of the families were forced to displace for reasons of domestic armed conflict and could not return to their ancestral territory".

33. That in the public hearing (*supra* Having Seen clause 7) the Inter-American Commission expressed that "the members of the Kankuamo Community continue being in danger, considering that the elements of extreme gravity and urgency required to maintain the enforcement of the provisional measures granted in their favor still exist". Therefore, "the Commission requests the maintenance of these provisional measures".

34. That the State, in said public hearing (*supra* Having Seen clause 7) expressed that "the nature of the problems today are [different from the ones that gave rise to the provisional measures,] as has been demonstrated in the reports forwarded and the State is committed to overcome these problems and obtain results".

35. That even though the State has adopted measures to protect the life and personal integrity of the members of the Kankuamo Indigenous Community, such measures have not been enough to eliminate the situation of extreme gravity and urgency in which the beneficiaries of these provisional measures live, as it spring from the information forwarded (*supra* Considering clauses 8, 9 and 10). Therefore, this Tribunal deems it is necessary to maintain the provisional measures.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

By virtue of the authority granted by Article 63(2) of the American Convention on Human Rights and Articles 26 and 30 of the Rules of Procedure,⁸

DECIDES:

1. To order the State to maintain and adopt the measures necessary to continue protecting the life, personal integrity and liberty of all the members of the communities that form part of the Indigenous Community of Kankuamo, in accordance with Considering clause 12 of this Order.

2. To urge the State to continue informing the Inter-American Court of Human Rights on the investigation into the facts that gave rise to these provisional measures, in accordance with Considering clause 17 of this Order.

⁸ Rules of Procedure of the Court partially amended during its LXXXII Period of Ordinary Sessions, held from January 19 to 31, 2009.

3. To urge the State to continue guaranteeing the conditions of security necessary to respect the right to freedom of movement of the people of the Kankuamo community, as well as of those who have been forced to displace to other regions in order to return to their homes, if they wish so; in accordance with Considering clauses 22 and 23 of this Order.
4. To urge the State to continue allowing the participation of the beneficiaries in the planning and implementation of the protective measures and to, in general, keep them informed on the progress of the measures ordered by the Inter-American Court, taking into account the terms set forth in Considering clauses 24 to 31 of this Order.
5. To require the State to present to the Inter-American Court of Human Rights a report, on July 31, 2009, on the provisional measures it has adopted in compliance with this Order and on the results of the meetings held in accordance with Considering clauses 12, 17, 23 and 31; and require the beneficiaries of these measures or their representatives and the Inter-American Commission on Human Rights to present their observations to the State's report, within the term of four and six weeks, respectively, as of receipt of the report.
6. To call upon the State to continue informing, after the presentation of the report ordered in operative paragraph five of this Order, the Inter-American Court of Human Rights, every three months, on the provisional measures adopted; and require the beneficiaries of these measures or their representatives and the Inter-American Commission on Human Rights to present their observations to the State's reports, within the term of four and six weeks, respectively, as of receipt of such reports.
7. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights and the beneficiaries of these measures and their representatives.

Cecilia Medina Quiroga
President

Diego García-Sayán

Sergio García Ramírez

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary