

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF AUGUST 30, 2010**

PROVISIONAL MEASURES REGARDING COLOMBIA

MATTER OF THE PEACE COMMUNITY OF SAN JOSÉ DE APARTADÓ

HAVING SEEN:

1. The Orders of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") of November 24, 2000; June 18, 2002; November 17, 2004; March 15, 2005; February 2, 2006; and February 6, 2008. In this last Order the Court resolved, *inter alia*:

1. To reiterate that the State must maintain the measures it has adopted and immediately establish any which may be necessary for the effective protection of the life and personal integrity of all of the members of the Peace Community of San José de Apartadó, in conformity with Considerations 11 and 18 to 20 [of] the [...] Order.

2. To require that the State report on the investigat[i]ons of the events which motivated the adoption of these provisional measures, in conformity with Considerations 18 and 19 [of] the [...] Order.

3. To reiterate that the State must carry out all efforts to provide for the participation of the beneficiaries of these measures, or their representatives, in the planning and implementation of the protective measures; and that, in general, the State report on the advancement of the measures ordered by the Inter-American Court of Human Rights, in conformity with Considerations 23 and 24 of the [...] Resolution.

4. Authorize the Presidency of the Inter-American Court to convoke a hearing, at an opportune time, with the State, the Inter-American Commission on Human Rights, and the representatives of the beneficiaries of the provisional measures, for the purpose of supervising the implementation of the provisional measures.

[...]

2. The briefs dated on June 2, 2008, July 17 and December 4, 2009, and March 5, 2010, by which the Republic of Colombia (hereinafter "the State" or "Colombia") reported on the implementation of the present provisional measures ordered by the Tribunal (*supra* Having Seen 1), as well as the briefs dated November 17, 2009, by which the State referred to actions undertaken to make effective the implementation of protective measures in favor of Mr. Eduar Lancho.

3. The briefs dated July 2, 2008, April 17 and September 20, 2009, and January 11 and April 24, 2010, in which the representative of the beneficiaries of the provisional measures (hereinafter "the representative") presented his observations regarding the State's reports (*supra* Having Seen 2); as well as the briefs of April 14 and November 13, 2008, and November 9, 2009, in which the representative petitioned the Court for, *inter alia*, "an urgent" and "extraordinary intervention" before the State in order to "save the life of

E[duar] L[anchero], companion of the Peace Community of San José of Apartadó," and the lives of the members of the Internal Council of the same community: Jesús Emilio Tuberquia y Reinaldo Arezia, as well as "to save the lives and integrity of persons protected" by the present provisional measures.

4. The briefs dated July 30, 2008, November 5, 2009, January 25 and March 11, 2010, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted its observations regarding the information offered by the State and by the representative (*supra* Having Seen 2 and 3).

5. The public hearing held on May 19, 2010¹, at the headquarters of the Inter-American Court, during the course of which the State informed about the implementation of the present provisional measures, and the representative and the Inter-American Commission formulated their observations in this regard.

CONSIDERING:

1. That Colombia is a State Party to the American Convention on Human Rights (hereinafter "the American Convention") as of July 13, 1973, and has recognized the adjudicatory jurisdiction of the Court since June 21, 1985.

2. That Article 63(2) of the American Convention states that:

[i]n cases of extreme gravity and urgency, and when it is 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 in relation to this material, Article 27 of the Rules of Procedure of the Court (hereinafter "the Rules")² establishes, in relevant part:

1. At any stage of proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, on its own motion, order such provisional measures as it deems appropriate, pursuant to Article 63(2) of the Convention.

¹ In conformity with Article 27(9) of the Tribunal's Rules of Procedure of the Court, the Court held a hearing in the present matter in which the following persons appeared: a) for the Inter-American Commission: Karla Quintana Osuna, adviser; b) for the beneficiaries of the provisional measures: Javier Giraldo Moreno, and c) for the State: Carlos Franco Echevarría, Director of the Presidential Program for Human Rights and International Humanitarian Law; Oswaldo Cuadrado Simanca, Municipal Mayor of Apartadó; Ángela Margarita Rey, Director of Human Rights and International Humanitarian Law, Ministry of Foreign Relations; Miguel Soto Carreño, Coordinator of the Working Group Regarding Matters of Protection and Information about Human Rights, Ministry of Foreign Relations; Natalia Salamanca, Adviser to the Working Group Regarding Matters of Protection and Information about Human Rights, Ministry of Foreign Relations; Luz Stella Bejarano, Adviser to the Human Rights Directive, Ministry of National Defense; Diana Catherine Abaúnza, Adviser to the Human Rights Directive, Ministry of National Defense; Lena Acosta, Adviser to the Office for Black, Afro-descendent, Raizales and Palenqueras Communities, Justice and Interior Ministry; Brigadier General Jorge Rodríguez Clavijo, Chief of Human Rights and International Humanitarian Law of the National Army; Doctor Hernando Castañeda Ariza, Chief of the National Unit of Human Rights and International Humanitarian Law of the Attorney General of the Nation; Doctor Carmen Torres Malaver, Local Prosecutor, appointed to the National Directive of Prosecutors of the Attorney General of the Nations; and Commandant John Henry Arango Alzáte, Coordinator of the Human Right Group of the National Police.

² Rules of Procedures of the Court approved in its LXXXV Ordinary Period of Sessions, held from November 16 through 28, 2009.

2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

4. The norm established in Article 63(2) of the Convention confers an obligatory character by the State to adopt the provisional measures ordered by this Tribunal, given that the basic legal principle of State responsibility, supported by international jurisprudence, has indicated that States must fulfill their conventional obligations in good faith (*pacta sunt servanda*)³.

5. In International Human Rights law, provisional measures have a character not only precautionary, in the sense that they preserve a legal situation, but fundamentally protective, insofar as they protect human rights by seeking to prevent irreparable harm to persons. Accordingly, provisional measures are transformed into a true legal guarantee of a preventative character.⁴

6. As a result of its competence, in the context of provisional measures it is the Court's responsibility to consider solely and strictly those arguments that directly relate to the extreme gravity, urgency, and the need to prevent irreparable harm to persons. Any other fact or argument may only be raised and analyzed during the consideration of the merits of a contentious case.⁵

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7. Prior to analyzing the implementation of the present provisional measures, the Court deems it advisable to refer to a pending issue pursuant to the Order of February 6, 2008 (*supra* Having Seen *), in which the Tribunal requested that the representatives and the Inter-American Commission clarify a situation regarding the beneficiaries of the present provisional measures. This request arose due to the fact that during the public hearing held regarding the present matter on February 4, 2008, the State considered that "the precise and exact determination" of the members of the Peace Community is of "the utmost importance," taking into account that the territory of San José de Apartadó has a population of approximately six thousand inhabitants, and that there has been a contradiction between that maintained by the leaders and representatives of the Peace

³ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of June 14, 1998, Considering Sixth; *Matter of Guerrero Larez.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering fifth; and *Matter of Alvarado Reyes et al.* Provisional Measures regarding the United Mexican States. Order of the Inter-American Court of Human Rights of May 26, 2010, Considering fifth.

⁴ Cf. *Case of "La Nación" Newspaper.* Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering Fourth; *Matter of Monagas Judicial Confinement Center ("La Pica").* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering Fourth; and *Case of Caballero Delgado and Santana.* Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 3, 2010, Considering Fourth.

⁵ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 29, 1998, Considering sixth; *Matter of Guerrero Larez,* *supra* note 3, considering seventeenth; and *Matter of Alvarado Reyes et al.* *supra* note 3, Considering sixteenth.

Community and that maintained by the families of affected persons, in relation to whether or not they belong to said Community.

8. In this regard, as stated in the Order of February 6, 2008 (*supra* Having Seen 1), the representative reported that the Peace Community is composed of a group of "136 families (approximately 816 persons)," who "adopt all of the principles of the Peace Community" and participate in decision-making and communal work. The representative indicated that these families are settled in the following *veredas* (small rural settlements), located in the municipality of San José de Apartadó: San Josesito (46 families), La Antena (6 families), La Cristalina (5 families), Arenas Altas (16 families), La Unión (52 families), Mulatos (5 families that will return in February 2008), and La Esperanza (6 families). However, the representative also indicated "that another group has been added," made up of families that live in "humanitarian zones" composed of approximately 144 families (approximately 864 persons) distributed over eight *veredas*: la Resbalosa (8 families), La Hoz (14 families), Rodoxalí (22 families), Sabaleta (39 families), Las Flores (21 families), El Venado (16 families) and Arenas Bajas (5 families), all located in the municipality of San José de Apartadó. In accordance with that stated by the representative, this group "has identified with the principles of the Peace Community although without assuming all of the commitments of participating in communal work and decision-making." The representative also indicated that the Peace Community "did not consider it prudent, but rather exceedingly risky, to submit the names of persons who are integrated with the Peace Community and the names of 'humanitarian zones' that have been joining."

9. As was pointed out in the previously mentioned Order of February 6, 2008, the Court takes note that at the moment of ordering the present provisional measures, it valued that the Peace Community of San José de Apartadó was composed of approximately 1,200 persons, constituting thus "an organized community, located in a determined geographic location, whose members can be identified and individualized," as was recognized by the Inter-American Commission almost ten years ago.⁶ In said Order, the Tribunal noted that "the collective definition of the beneficiaries of these provisional measures depends on their belonging to the Peace Community, their geographic location in the municipality of San José de Apartadó, and the situation of grave danger that confronts the members as a result of their belonging to said community." However, it remains unclear to the Court the status of the approximately 144 families distributed throughout eight *veredas* which were noted by the representative, who according to the report "have identified with the principles of the Peace Community, although without assuming all of the commitments of participation in communal work and decision-making." Due to the ambiguity regarding this matter, the Court requests that the representative and the Inter-American Commission clarify this situation, "taking into account that which had been assessed by the Tribunal at the time of adopting these provisional measures." However, almost two years later, the Tribunal has not received information that explains the situation of the 144 families in question.

10. In situations such as the present,⁷ the Court has ordered the protection of a plurality of persons that have not been previously named, but who are identifiable and

⁶ Cf. *Case of the Peace Community of San José de Apartadó*, Provisional Measures regarding Colombia, Order of the Inter-American Court of Human Rights of November 24, 2000, Considering seventh.

⁷ Cf., *inter alia*, *Matter of the Peace Community of San José de Apartadó*, *supra* note 7, Considering seventh; *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*, Provisional Measures regarding Brazil, Order of the Inter-American Court of Human Rights of November 30, 2005, Considering sixth; and *Matter of The Communities of Jiguamiandó and Curbaradó*, Provisional Measures regarding Colombia, Order of the Inter-American Court of Human Rights of February 7, 2006, Considering eighth.

determinable, and who are found in a state of grave risk in regards to their belonging to a group or community. Given the collective dimension of the provisional measures ordered in this matter, this Tribunal has determined that the members of the Peace Community, beneficiaries of these measures, do not need to be previously named. Additionally, the Court understands that in matters such as the present, in which the beneficiaries of the protective measures are found in a situation of grave risk due to their belonging to a community, the supplying of a list with the names of these persons could aggravate their situation.⁸ However, for the purpose of adequately supervising the implementation of the corresponding measures, in matters such as the present it is necessary for the Tribunal to understand with as much clarity as possible, and based upon updated information, the universe of beneficiaries of these measures, especially when these have been valid for approximately ten years and the information supplied by the representative and the Inter-American Commission is discrepant.

11. As established by Articles 63(2) of the American Convention and 27(2) of the Rules of Procedure of the Court, the Commission may request from the Tribunal the adoption of provisional measures in cases that have still not been submitted to consideration by the Court. Given that the present provisional measures have not been adopted in the context of a contentious case before the Court, it falls to the Inter-American Commission to clarify to the Tribunal what is the universe of beneficiaries of these provisional measures, which were adopted at the Commission's request, without prejudice with regards to the information which might be presented directly to the Court by the representative.

12. Therefore, the Tribunal reiterates to the representatives and to the Commission that they must clarify the situation of the 144 families apparently located in the districts La Resbalosa, La Hoz, Rodoxalí, Sabaleta, Las Flores, El Venado, and Arenas Bajas, all in the Municipality of San José de Apartadó. Notwithstanding the aforementioned, and given that prior to the Order of February 6, 2008, the State in its reports had referred to acts which were apparently committed against the habitants of some of the noted districts, the Court considers it proper to maintain in effect the measures already ordered by the Tribunal in its Order of November 24, 2000, ratified through the Resolutions of June 18, 2002, November 17, 2004, March 15, 2005, February 2, 2006, and February 6, 2008 (*supra* Having Seen 1), in favor of "all the members of the Peace Community of San José de Apartadó."

13. On the other hand, the Court observes that, in different submissions, the representative has referred to acts which were apparently committed against persons who belong to other *veredas* or to events which took place in other demarcations distinct from those indicated previously (*supra* Considering*). For example, the representative has mentioned the *veredas* Los Mandarinos (although this has also been referred to as a "caserío," or Hamlet), Las Nieves, Playa Larga, El Porvenir, Buenos Aires, La Balsa, Naín, El Guineo, Caracolí, Las Claras, and Miramar. The representative has also alluded to the neighborhoods El Mangolo, 20 de Enero de Apartadó, Alfonso López de Apartadó, and Policarpa, as well as the Hamlet of San José. Additionally, on other occasions the representative has referred to *veredas* which do not appear to be located with the Municipality of San José de Apartadó, such as the *veredas* Batata and Murmullo, de Tierralta, Córdoba. On yet other occasions, the representative has referred to persons with respect to whom it is not indicated whether they belong to any of the *veredas* which are comprehended by the present provisional measures, or if they belong to other settlements that are not beneficiaries of said measures.

⁸ Cf. *Matter of the Peace Community of San José de Apartadó*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering Ninth.

14. In this sense, to adequately analyze the implementation of the provisional measures, the Court requests that in its submissions the representatives refer only to the beneficiaries that inhabit the *veredas* or settlements which are comprehended by the present measures, in conformity with Consideration 8 of the present Order.

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15. Regarding the measures adopted and the immediate implementation of those that are necessary for the effective protection of the life and the personal integrity of all members of the Peace Community of San José de Apartadó (hereinafter, "Peace Community"), (first operative paragraph of the Order of February 2008, *supra* Having Seen 1), the State reported, *inter alia*, that it had provided consistent training to the members of law enforcement in the area. Additionally, it referred to "tactical offensive measures" as well as "military control" and "neutralization," carried out in the general area of the territory of San José de Apartadó, which the State considers "have generated the security conditions that are required for the inhabitants of this territory to freely exercise their rights." Additionally, the State highlighted that various "Security Councils" had been organized. Regarding the behavior of the members of the National Army, the State notified that on "November 10, 11, and 12, 2009, it sent a verification commission to the area, with the goal of reviewing complaints about situations that affect the Community of San José de Apartadó, in response to the petition submitted by the Ministry of Defense to the General Inspector of the National Army due to facts alleged by the representative. During the public hearing (*supra* Having Seen 5), the State explained in detail that in said visit the complaints [presented by Mr. Javier Giraldo] were verified one by one, identifying the status of investigations and noting that the majority were under review of the Attorney General of the Nation in disciplinary procedures of the highest order. Additionally, it noted that it carried out a second visit from March 16 to March 22, 2010. Moreover, during the public hearing the State indicated that it had "redoubled action against delinquent groups in the area[, and that] it had captured 155 members of criminal gangs [...]."

16. Additionally, the State reported that the National Government incorporated the territory of San José de Apartadó "as one of the areas subject to intervention by the Center for Coordination of Integral Action" [CCAI, for its name in Spanish]. The State pointed out that "[t]here are signs of improvement on different fronts, which is reflected in the return of displaced persons with the consequent repopulation of a high percentage of the urban sector of San José de Apartadó and its *veredas*, particularly those that are found near the municipal center of the territory; in the economic revitalization, demonstrated by the utilization of rural areas through the planting of different agricultural products, and also through the opening of new commercial establishments; and in the social investment represented by the rendering of health and education services by national, departmental, and local governments." However, the State insisted that the principal flaws for the work that they must carry out in favor of the members of the Peace Community and those who use their services are: i) "lack of knowledge of the identity of the persons composing the Community"; ii) "lack of clear definition regarding in which places the members are situated, given that the only identification given as a point of agreement is 'La Holandita' ranch"; and iii) "lack of dialogue with the leaders and/or representatives of the Peace Community," which impedes knowledge of "the threats that they face – in the moment that they are presented – making it difficult for the troops attempting to neutralize potential aggressors." However, during the public hearing the State referred to its notification of the individualization of 136 families, beneficiaries of the provisional

measures, located in seven *veredas* “as a positive fact” because it “helps to precisely determine the beneficiaries and give precise orders to law enforcement regarding their location. Regarding the protection of beneficiaries, the State noted that it undertakes “unilateral efforts” to understand its obligations and to achieve full commitment in the application of the decisions of the Inter-American Court.

17. The representative expressed that the increase in courses in Human Rights and in International Humanitarian Law given to members of the army and the police “does not constitute an effective mechanism for assuring the protection and respect of [...] the civil population, as long as they [are] not accompanied by criminal sanctions and exclusion from public functions.” Additionally, the representative indicated that for the Peace Community, the military operations carried out by the Army in the area “are not of protection but of aggression,” given that “they have always amounted to a cover-up for barbaric aggressions by the Army against the Community and the area’s rural population [...]” Additionally, the representative indicated that “there has not been any repopulation of the Peace Community’s displaced families” but rather, “various homes of the displaced have been looted” and “[their] collective goods [...] occupied,” and that “[i]f there are new settlements in the hamlet, the issue is not one of displaced Peace Community members that have returned but of a repopulation induced by the Police and Army to give the impression of ‘normalization.’” The representative expressed that the Security Councils that have developed in the area “do not have the aim of examining, in an objective and impartial manner, the situation of risk for the Peace Community; [...] on the contrary, their purpose is to distort the charges brought by the Community and to try to legitimize the aggressions of the State Institutions.” Regarding the social investment project for the Territory of San José de Apartadó, the representative expressed that “it is a mechanism to pressure the Peace Community to accept the presence of law enforcement,” “that seeks to construct communities which are allied with the State’s camp.” Finally, the representative observed that Brigade XVII “ignores essential information that the Court has transmitted many times to the State within the procedures of the provisional measures,” such as “the location of the members of the Peace Community;” “the reasons the rupturing of cooperation and dialogue between the Government and the Community;” “the conditions that the Community has laid out for their resumption;” and “the reasons for not providing the names of its members.” In various submissions and during the public hearing, the representative gave details of a series of acts which were apparently committed against the beneficiaries of the present provisional measures, including, *inter alia*, threats against life and personal integrity, including of extermination; intimidation; torture; forced registration; detentions; holdups; false accusations, etc. The representatives indicated that both paramilitary and army members were presumed responsible for these acts. During the public hearing, the representative also indicated that “the observations of the community have not at all resonated with the government during the two years that have passed since the previous hearing [in 2008].”

18. The Commission made reference to, among other aspects, “the deaths of Ediógenes Guzmán David [December 20, 2007] and Margarita Giraldo Úsuga [December 23, 2007],” as well as “the detentions of Germán Graciano [and] Eduar Lancho [on January 16, 2008], Amanda Úsuga [on April 19, 2008], Emilio Vásquez, Juan Góez [and] Ever Góez [on April 24, 2008] and Huldar Montoya [on June 20, 2008].” During the public hearing, the Commission indicated that “far from seeing improvements in the situation of the beneficiaries of the [provisional measures], the situation of extreme need, urgency, and immediate harm persists, and the elements which gave rise to this situation have not been eliminated.” The Commission expressed concern that the representative had reiterated that threats and stigmatization against the Peace Community’s inhabitants “by members of the army and by paramilitaries are constant,” in addition to other alleged aggressions.

19. The Tribunal notes that there is a profound disagreement between the parties regarding the supposed effectiveness that the measures adopted by the State have had for the beneficiaries of the present provisional measures. In this regard, the Court emphasizes that in its written reports, as well as in that submitted during the public hearing (*supra* Having Seen 5), Colombia, in general, has referred to these measures in detail. However, in contrast, the representative has expressly indicated that said measures, particularly those related to military operations undertaken in the area of the Peace community, have generated an environment of aggression rather than protection. On this point, the Commission has reported that the situation of the beneficiaries has not improved.

20. The Court observes that the State has presented vast information regarding the actions carried out in the area in which the Peace Community is located. In this regard, the Tribunal has received general information that does not only correspond to this area but also to other settlements or towns that, even though they are located within the Municipality of San José de Apartadó, do not refer specifically to the members of the Peace Community. This has been the situation since the last Order handed down by the Tribunal on February 6, 2008. The State has constantly referred to measures implemented "in the general area of the territory of San José de Apartadó," which, in its opinion, "have generated the security conditions that are required for the inhabitants of this territory to be able to freely exercise their rights." The information provided by the State does not enable verification regarding which of the measures ordered by the Tribunal have been implemented in favor of the members of the Peace Community specifically, mainly because what is referred to are the events that have given rise to the present provisional measures and their continuance over the course of almost ten years.

21. Nonetheless, the Court takes into consideration that Colombia has also informed that it has carried out other actions to achieve "repopulation" and "economic revitalization" in the "urban sector of San José de Apartadó and its *veredas*." The Tribunal reiterates that within the Framework of the present provisional measures, the State's obligation must center on implementing and informing regarding those measures that are directly linked with the protection of life and integrity of the beneficiaries, that is, of the members of the Peace Community of San José de Apartadó.

22. Notwithstanding the aforementioned, the Court takes note that the State is conscious of the situation in which the members of the Peace community find themselves and that, in that regard, it has adopted the measures that it considers pertinent for their protection. However, the Court does not fail to perceive that despite these measures, there continues to be complaints from the representative of hostage-taking, intimidation, threats, looting, etc. against the beneficiaries. Additionally, the Court takes note that while the present provisional measures have been in effect, certain persons who are protected by these measures have been detained or deprived of life. Moreover, the representative has continually reported that the persons presumed responsible for these acts of violence against the beneficiaries are both members of illegal armed groups and members of the security forces.

23. Within the framework of these provisional measures, the Court has already indicated that to effectuate the rights consecrated in the American Convention, a State Party has the obligation, *erga omnes*, to protect all persons who are under its jurisdiction. In the Court's opinion, said general obligation is imposed not only in relation to the power

of the State but also in relation to actions of third parties, including irregular armed groups of any nature.⁹

24. Based on the aforementioned, and given the special characteristics of the present matter and the general conditions of irregularity in the area, it is necessary to maintain protection, through provisional measures, of all the members of the Peace Community, in light of that provided by the American Convention on Human Rights. The state must continue adopting measures which are necessary to address the particular situation of the members of the Peace Community of San José de Apartadó.

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25. With respect to the investigations of the events which motivated the adoption of these provisional measures (second operative paragraph of the Order of February 2008, *supra* Having Seen 1), the State reported that the General Prosecutor of the Nation, through the National Leadership of Prosecutors, in coordination with the Human Rights and International Humanitarian Law Unit [hereinafter “UNDHDIH” for its name in Spanish] of Bogotá D.C. and Medellín, and the Sectional Leaderships of Antioquia and Medellín, “have given priority to the criminal investigations forwarded for crimes committed against members of the Peace Community of San José de Apartadó.” The State has presented detailed information relative to diverse investigations and processes. During the public hearing held on the present matter, the State repeated this information and also added that “it created a table of recorded information.”¹⁰ Additionally, the State also indicated that it provided guidelines for keeping the recorded information updated with “new cases and their advancement,” as well as for the purpose of periodically carrying out “Technical Juridical Committees that permit, after the difficulties found in its development are known, the implementation of investigative strategies in favor of optimizing results, thereby prioritizing the cases related to the Peace Community of San José de Apartadó.” During said hearing the State reported that “of the 227 investigations initiated, 105 of them have been *ex-officio*, giving them due priority and creating technical juridical committees that permit their period evaluation [...] such as the creation of a particular group of prosecutors in the UNDHDIH that are dedicated exclusively to the development of the matter of San José de Apartadó.” The State also offered as results “the imposition of 94 measures of assurance, 31 resolutions of accusation and the conviction of 31 persons in 15 sentences proffered in 12 cases” for diverse crimes. However, the State made reference to a series of “obstacles” to “the significant advancement of each of these investigations,” such as the scarcity of information in relation to the events that have been put under consideration through messages received by electronic mail, the lack of informative collaboration by the Community of San José de Apartadó, as well as of the victims themselves who publicly have recognized their refusal to assist the work of the judicial authorities. During the public hearing (*supra* Having Seen 5), the State submitted a document regarding the “investigation of crimes committed against members of the Peace Community of San José de Apartadó,” in which, *inter alia*, it provided information regarding ten cases before the

⁹ Cf. *Matter of Peace Community of San José de Apartadó*, Provisional Measures regarding Colombia. Order of March 15, 2005, operative paragraph second, subparagraph i), and *Matter of Peace Community of San José de Apartadó*, Provisional Measures regarding Colombia. Order of February 6, 2008, Considering seventeenth.

¹⁰ According to that reported by the State, this table includes, “in addition to the processes in progress, the accounts of the alleged criminal events committed against members of the Peace Community of San José de Apartadó and of persons to whom they provide services, which was remitted to the Prosecutorial Sectional Directives of Antioquia and Medellín, and to the National Unit of Human Rights and International Humanitarian Law for classification and the official commencement of the corresponding investigations.”

National Unit of Human Rights and International Humanitarian Law, five cases before the sectional directive of Antioquia, and three cases before the sectional directive of Bogotá.

26. The representative indicated, among other things, that “[the] crimes perpetrated against the members of the Peace Community never have been investigated as what they truly are: as Crimes Against Humanity.” During the public hearing (*supra* Having Seen 5), the representative mentioned that “the type of justice that is being implemented for the crimes that have affected the Peace Community is contrary to international law and to numerous constitutional and national legal precepts, [because] it is evident to any observer that, against the population of San José de Apartadó [and] especially, against the members of the Peace Community, there systematic crimes have been perpetrated following the same script for almost fifteen years[,] whose responsibility lies with direct and indirect agents of the State that have acted in a coordinated manner.” Additionally, the representative indicated that “another structural flaw that affects the credibility and validity of the investigations of the Prosecutor and Colombian judges is the handling of evidence. In this regard, during the public hearing the Representative indicated that “the Peace Community has also questioned the methods used by the Prosecutor to demonstrate results, because they are supported by a justice that is always reduced to testimony alone; in this case the testimony of persons who for decades have been involved in barbaric practices, whose credibility is far too fragile, is converted into proof; and said justice has been exercised against rural persons in the area, including against members of the Community.”

27. The Commission “value[d] that on March 26, 2009, the Second Criminal Tribunal of the Apartadó Circuit issued a conviction against seven individuals in which a penalty of 30 years in prison was imposed for the death of Edilberto Vásquez Córdoba;” however, it requested that the Court “require that the State produce probative evidence that supports said information and that it informs whether said persons are actually serving their sentence.” The Commission also referred to the investigation in the case of Rodrigo Salas David, which according to information presented by the State, passed from the military criminal justice system to the ordinary justice system. Consequently, the Commission requested that the Court “require the state to provide documentation complementing this particular information.” During the public hearing, the Commission indicated that “it understood that the State was submitting a report regarding the advances of the investigation, for which the Commission reserved the right to analyze said information,” but that the elements it had relied on prior to the hearing indicated that “there had not been significant advances in the majority of the information presented by the State in relation to investigations and specifically regarding the multiple threats received by Mr. Eduar Lanchero,” for which it reiterated its request for precise information regarding “all and each of the threats received” by said person.

28. The Court observes that the State has been informing about diverse investigations initiated in relation to acts which apparently took place against beneficiaries of the present provisional measures. According to the most recent information, presented by the State during the public hearing (*supra* Having Seen 5), there are 227 “initiated” investigations; however, in the document that was presented during the same hearing, the State only provided information of 18 cases being followed, respectively, before the National Unit of Human Rights and International Humanitarian Law and the Sectional Directive of Antioquia and Bogotá. The Tribunal observes that said information also refers, *inter alia*, to investigations initiated for or against persons that are not beneficiaries of the present provisional measures, such as that related to “threats” in which the victim is the “priest Javier Giraldo Moreno,” or that related to the “injury, defamation, and false accusations” against “Coronel Néstor Iván Duque López”.

29. The Court values and takes note of the commitment assumed by the State in the sense of driving the investigations and giving priority to those related to the members of the Peace Community (*supra* Considering 25). On the other hand, regarding the representative's argument that the "type of justice" that is being "implemented" to address the acts which have been committed against the members of the Peace Community (*supra* Considering 26), the Tribunal considers that Convention violations which are derived from a presumed lack of effectiveness or due diligence in investigations should be analyzed in the respective contentious case and not in the context of provisional measures.¹¹ The Court considers that, in any case, such matters should be analyzed by the Inter-American Commission during the procedures for the corresponding petition. Additionally, in relation to the Commission's allegations that "there have not been significant advances in the majority of the information presented by the State in relation to the investigations," the Court reiterates that while the present matter is under consideration by the Commission, it corresponds to that body to consider the aspects relative to the results of investigations and to take the measures that it deems pertinent, according to its authority.

30. Taking the aforementioned into account, in the framework of the present provisional measures and as it has done in other matters,¹² the Court will not consider the effectiveness of the investigations which have been carried out or the alleged lack of due diligence; nor will it analyze the alleged results of such investigations. This does not absolve the State of its obligation to investigate the charges that sustain the present measures, in terms of Article 1(1) of the American Convention, which establishes the general obligations that State Parties have with respect to the rights and liberties enshrined therein and to guarantee their free and full exercise to all persons subject to their jurisdiction.

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31. Regarding the State's obligation to make all efforts to provide for the participation of the beneficiaries of the measures or their representative in the planning and implementation of the protective measures, and its general obligation to keep them informed regarding the advance of the measures ordered by the Tribunal (first operative paragraph of the Order of February 6, 2008), the State reported that while "it is true that until the present date it has not been possible to re-establish the channels of communication that permit sustained dialogue with the beneficiaries and petitioners of the present measures," it reiterated its willingness to work in cooperation in the monitoring of the same. In this respect, during the public hearing the State signaled that "it is impossible to comply with the orders of the [...] Court in relation to protection and investigations, without having dialogue with the beneficiaries and their representatives." Additionally, the State indicated that it has "the

¹¹ Cf. *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of the CASA Foundation*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 3, 2007, considering seventeenth; *Matter of the Newspapers "El Nacional" and "Así es la Noticia"*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 25, 2008, Considering thirty-six; and *Matter of Carlos Nieto Palma et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of January 26, 2009, Considering fifteenth.

¹² Cf. *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 3, 2007, Considering seventeenth; *Matter of Millacura Llaipén et al.* Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering sixteenth; and *Matter of Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of November 25, 2009, Considering thirty-second.

willingness for the agreement mechanisms to have control and oversight as agreed to by the representative." Additionally, in relation to the conditions set out by the representative to reactivate cooperation (*infra* Considering 32), the State notes that "the Government has repeatedly pronounced about these [conditions], [...and that] in relation to the issue of humanitarian zones, the government's position has been with regard to the civil condition and the civil good of the population, and to discuss the conditions in which law enforcement may have a presence under certain special circumstances; with regards to the installation of a police post in the territory of San José de Apartadó, [...] it is a situation which the government considers necessary and [which] additionally has been beneficial to the area; [moreover,] the State has reiterated to the Court that information [on this matter] received by the President has been duly transcribed and made public via Presidential declarations; [finally, that the question of] an evaluation commission of the Prosecutor's actions has been discussed in depth [...] but [it] cannot come to being if there is not willingness to dialogue [...]." The State also notes that "if one approaches the [Inter-American] system, this system is based in three parts: the organs, the State that fulfills obligations, and the petitioners or beneficiaries," that this "table does not function with only two legs," and that there is no logic in "measures without cooperation." Finally, the State asks that officers of the Inter-American Commission and of the Tribunal request the representative to reconsider "re-establishing mechanisms for dialogue."

32. The representative observed that the State "ignores the repeated presentations of the [Peace] Community, remitted many times already to the Government thought the [...] Court, of the four minimal conditions of good faith that would be necessary to secure prior to returning to the negotiating table": 1) "Revoke the decision to allow the police a physical presence in the territory of San José de Apartadó, returning to the discussion furthered during a year regarding a police presence which allows the police force to fulfill its constitutional mission without violating the legitimate and essential principals of a Peace Community, respecting the principles laid out in Sentence T/1206/01 de la Constitucional Court"; 2) "Rectify the defamation uttered [...] against the Peace Community"; 3) "Construct a Justice Evaluation Commission, to reverse the monstrous impunity which blankets hundreds of crimes against humanity perpetrated against the Peace Community"; 4) "Recognize the Humanitarian Zones proposed by the very vulnerable *vereda* populations, with support in the Conventions and Protocols that constitute International Humanitarian Law." Additionally, the representative referred to "Sentence T-1025/07 of the Constitutional Court" and, based upon this, expressed that the State has the obligation "to retire the police post that was established in the [...] urban center of San José de Apartadó [...] on April 1, 2005, [...] and to establish controls very similar to those requested by the Peace Community, when dialogue was possible."

33. The Commission reiterated the importance of the mechanisms of social cooperation between the State, and the beneficiaries and their representative, in terms of the implementation of the present measures. Therefore, it considered that "these type of obstacles should be overcome in good faith by both parties" and noted that "any protective measure should be based on the circumstances and needs of the beneficiaries." During the public hearing, the Commission made "a call to the parties to return to establish dialogue, aiming to build upon effective gestures by the State, which in turn would generate the confidence of the beneficiaries."

34. The Tribunal emphasizes that in the present matter, both the State and the representative have confirmed that there is no cooperation between them. In this regard, in the Constitutional Court's Sentence T-1025/07, referred to by the representative (*supra* Considering 32) and cited by this Tribunal previously in its Resolution of February 6, 2008 (*supra* Having Seen 1), said Court indicated that "the Peace Community's distrust with

respect to State institutions was understandable,” and that this “attitude of prevention had driven the Peace Community to devise a course of antagonism directed at state institutions [...]” While the Constitutional Court highlighted that “the party primarily responsibility for taking measures to generate confidence is the State and not the Peace Community,” it also stated that “[i]n view of the number of victims that the Community has suffered and the difficulties it confronts, one must question whether the course it has chosen is the most appropriate to guarantee the rights and well-being of its members.”

35. Regarding the conditions imposed by the representative and the beneficiaries to resume cooperation, the Court again notes that the usefulness of the provisional measures depends, in large part, on the real possibility that these will be implemented.¹³ Upon ordering the State to adopt the necessary measures to protect the life and personal integrity of the beneficiaries, the Court did not determine the particular protective measures that are required. However, it ordered that said protective measures shall be implemented in an effective manner and, in particular, through the mechanisms of participation that are generated among the beneficiaries or their representatives, and the state authorities charged with the planning and implementation of the same. In this regard, in the framework of the present provisional measures the Court cannot pronounce regarding the representative’s conditions. However, the Tribunal observes that previously it had indicated that the situation of distrust and absence of cooperation between the State and the beneficiaries of these provisional measures should be overcome (*supra* Having Seen 1, Considering 24). In this regard, the State has expressed that it is positioned for cooperation mechanisms to develop “control and oversight” in agreement with the representative. In turn, the representative has not proposed alternative options that would permit his participation in coordinating the measures that the State must adopt.

36. The Tribunal reiterates that the situation of mistrust and lack of cooperation between the State and the beneficiaries of these provisional measures must be overcome. In this regard, it urges that, at the earliest possible moment, the parties carry out all of the gestures necessary to achieve the pertinent agreements regarding the measures that must continue to be implemented to guarantee the protection of the beneficiaries, all aspects taking into account their particular situation, as has been referred to throughout this Order. The Court stresses the fundamental role that the Inter-American Commission can have in this process, as an organ of the Inter-American System of Protection of Human Rights and as the petitioner of the present provisional measures. The Tribunal considers that the efforts of cooperation must be maintained and that all of the parties should contribute in the best form possible to the implementation of the measures.

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37. On repeated occasions, (*supra* Having Seen 3), the representative requested from the Court “an urgent and extraordinary intervention” before the Colombian State, with the intention of saving the life and integrity of the persons protected by these measures, in particular, “to save the life of E[duar] L[anchero], companion to the Peace Community of San José de Apartadó [...], as well as to the members of the Internal Council of the same community: J[esus] E[milio] T[uberquia] and R[einaldo] A[reiza].” In this regard, the representative referred to the alleged death threats, arbitrary detentions, plans to execute

¹³ Cf. *Case of Caballero Delgado and Santana*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering thirteenth, and *Case of Caballero Delgado and Santana*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 3, 2010. Considering sixteenth.

and attack against said persons' lives, supposedly effectuated by paramilitary groups, Police agents, and soldiers from the National Army. Among others, the representative indicated that in an interview conducted by mister Fernando Londoño Hoyos and radio broadcasted, the former guerilla member nicknamed "Samir," allegedly proffered copious defamatory statements against the leaders, companions, and member of Peace Community, specifically against Mr. Eduar Lanchoero.

38. The State informed the Court about the opened criminal investigations in which the victim is Mr. Eduar Lanchoero. Regarding the protective measures in favor of Mr. Eduar Lanchoero, the State informed that "in protective matters, he has an institutional offer to join the Protection Program of the Interior and Justice Ministry, as well as the Protection and Assistance to Victims and Witnesses Program of the Attorney General of the Nation, both of which [...] it put in the beneficiary's knowledge." Notwithstanding the above, it warned that "admission into these programs require the person's free and voluntary decision." Regarding the interview conducted by Mr. Fernando Londoño Hoyos to the former guerrilla member nicknamed "Samir," the State indicated that "currently there is a *sua sponte* investigation being conducted at the Prosecution Unit No. 243 in Bogota D.C., on charges of defamation, under No. 05045600032400900130, in which the members of the Peace Community are held as victims." However, because defamation is a crime prosecuted upon party's request, the State asked the beneficiaries to formally present the criminal complaint. On information requests that the Court formulated (*infra* Considering 40), the State indicated that the information was given by the representative and that he has said that he does not want protection programs for Mr. Eduar Lanchoero, and thus the State cannot report on existing measures but on offered measures.

39. With respect to the situation of Mr. Eduar Lanchoero, the representative argues that the State has referred to "investigations which have not advanced beyond the oldest threats," and that the State "is quiet about the threats which most implicate its institutions." Additionally, the representative indicates that that proposal of the State for Mr. Lanchoero to take refuge is the existing systems of protection, in the Interior Ministry and in the Attorney General's Office, "is completely impertinent, since Mr. Lanchoero does not have the character of a 'witness' who must be protected in order to find refuge in the Attorney General's system, notwithstanding the serious questions about its efficacy and independence. Neither can Mr. Lanchoero accept protection of an organ such as DAS [Security Administrative Department, for its name in Spanish], involved [...] in persecution against the Peace Community." Regarding the request of the State to present a complaint against the declarations of the ex-guerillo alias "Samir," (*supra* Considering 38), the representative indicated that "[the] Community does not currently trust in the actions of the justice system."

40. The Inter-American Commission requested, "[i]n view of the gravity of that reported by the representative, the lack of specific information by the State [...], and the context of risk," that the Court require that State provide "detailed information regarding said actions and implement urgent protective measures with respect to Eduar Lanchoero."

41. Through the Hearing Order of the President of the Inter-American Court, dated May 19, 2010 (*supra* Having Seen 5), it was expressly requested the Inter-American Commission to present its position regarding the specific situation of Mr. Eduar Lanchoero as an alleged beneficiary of the present provisional measures (Considering 22). Particularly, the Court observes that Mr. Eduar Lanchoero has been referred to as "companion" of the Peace Community, but not any more specifically as a member of the Community. However,

during the referred-to public hearing, the Commission did not answer to the Tribunal's request.

42. Notwithstanding this, the Court observes that the dossier of the present provisional measures records that the representative of the beneficiaries has mentioned that Mr. Eduar Lanchoero has been with the Peace Community "since the first months in which this population suffered massive displacement," and that over the passage of time, the population "was asking him [...] to prolong his accompaniment, until he came to be considered one of the Community."¹⁴ With regard to this situation, the State has not objected to Mr. Eduar Lanchoero's situation as a beneficiary of the present provisional measures.

43. Given the confluence of factors that reveal grave aggressions against members of the Peace Community, and in view of the information presented by the representative, it is reasonable to infer that Mr. Eduar Lanchoero, Mr. Jesús Emilio Tuberquia, and Mr. Reinaldo Areiza are in a situation of extreme gravity and urgency which merits the adoption of specific measures for their protection. In this regard, the Tribunal takes into account that the representative has expressed his opposition to the measures on behalf of Mr. Lanchoero being adopted within the Program of Protection and Assistance for Victims and Witnesses of the Attorney General of the Nation. However, the representative has not presented other options by which Mr. Lanchoero could rely on the protection he requires.

44. Taking into account the aforementioned, the Tribunal finds that the State must adopt special measures necessary to protect the life and integrity of Mr. Eduar Lanchoero, Mr. Jesús Emilio Tuberquia, and Mr. Reinaldo Areiza, and that said measures should be agreed upon with the representative. This should facilitate dialogue with the State as well as an analysis of the measures that are most agreed upon. However, independent of the need to achieve measures in agreement with the representative, the Tribunal recalls that the State is especially obliged to guarantee the rights of such persons, and that they should propel the necessary investigations to clarify the facts, in terms of that laid out by Article 1(1) of the American Convention (*supra* Considering 30).

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45. The Court hereby notes that the present provisional measures were granted on November 24, 2000¹⁵ (*supra* Having Seen 1), and that they have been in effect for almost ten years. To a question expressed by the Tribunal during the public hearing held on the present matter (*supra* Having Seen 5), The Inter-American Commission responded that the respective petition is in the admissibility phase, that is, it still has not been accepted.

46. The Court has established that the provisional measures have an exceptional nature, that they are announced according to the needs of protection and, once announced, they

¹⁴ Cf. Representantative's brief dated November 9, 2009, (provisional measures file, volume XII, leaf 3059).

¹⁵ October 9, 2000, the President of the Inter-American Court of Human Rights adopted urgent measures in favor of the members of the Peace Community. Cf. *Matter of Peace Community of San José de Apartadó*. Provisional Measures regarding Colombia. Order of the President of the Inter-American Court of Human Rights of October 9, 2000, operative paragraph first. These measures have been ratified subsequently by the Court through the Order of November 24, 2000, (*supra* Having Seen 1).

have to be kept for as long as the basic requirements of extreme gravity and urgency¹⁶ persist. Therefore, the provisional measures refer to a temporal specific situation and, because of their nature, they cannot be perpetuated indefinitely.

47. In view of the above, the Court requests clear, concise, and detailed information from the Inter-American Commission to confirm the condition of extreme gravity and urgency, and the danger of irreparable damage that originated these provisional measures even after 10 years of their validity, in order to determine if they should be kept.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

In the exercise of its powers conferred by Article 63(2) of the American Convention and Article 27 of the Rules of Procedure,

RESOLVES:

1. To reiterate to the State that it maintain the measures which have been adopted and immediately provide those which are necessary to effectively protect the life and personal integrity of all the members of the Peace Community of San José de Apartadó, in conformity with Considering 22 and 24 of the present Order.
2. To reiterate to the State and to the beneficiaries or their representative that they should bring about all necessary efforts to achieve cooperation tending to give participation to the beneficiaries of the measures or their representative in the planning and implementation of the protective measures, and that, in general, the State keep them informed of the advancement of the measures ordered by the Inter-American Court of Human Rights, in conformity with Considering 36 of the present Order.
3. To request that the Inter-American Commission and the representative of the beneficiaries make clear to the Tribunal the universe of beneficiaries of the present provisional measures, no later than October 15, 2010, in conformity with Considering 12 of the present Order.
4. To reiterate to the State that it must continue reporting to the Inter-American Court of Human Rights every two months regarding the provisional measures adopted, and to require the beneficiaries of these measures or their representative to present their observations within a period of four weeks after the notification of the State's reports; and to require the Inter-American Commission on Human Rights to present their observations on said reports within a period of six weeks after their reception.
5. To notify the present Order to the State of Colombia, the Inter-American Commission on Human Rights, and the representative of the beneficiaries.

¹⁶ Cf. *Matter of Clemente Teherán et al. (Indigenous Community Zenú)*. Provisional Measures regarding Colombia. Order of the Court of December 1, 2003, Considering third; *Matter of Gallardo Rodríguez*. Request for Provisional Measures regarding Mexico. Order of the Court of July 11, 2007, Considering tenth, and *Matter of Alvarez et al.* Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 8, 2008, Considering thirteenth.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alesandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary