

**Order of the
Inter-American Court of Human Rights *
of February 5, 2008
Provisional Measures
With regard to the Republic of Colombia
Matter of the Communities of Jiguamiandó and Curbaradó**

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal") passed on March 6, 2003, whereby it ordered:

1. To request the State of Colombia to adopt, without delay, any measures necessary to protect the life and personal integrity of all members of the Community Council of Jiguamiandó and Curbaradó families.

2. To request the State of Colombia to investigate the events that resulted in the adoption of these provisional measures, in order to identify those responsible and to impose the corresponding penalties.

3. To request the State of Colombia to adopt any measures necessary to guarantee that the individual beneficiaries of these measures can continue living in their current location, free from any threat or coercion whatsoever.

4. To request the State of Colombia, in accordance with the provisions of the American Convention of Human Rights, to grant special protection to the so-called "humanitarian refugee zones" established by the members of the Community Council of Jiguamiandó and Curbaradó families and, to that effect, to adopt any necessary measures so that they actually receive all humanitarian assistance provided.

5. To request the State of Colombia to guarantee the necessary security conditions for the members of the Community Council of Jiguamiandó and Curbaradó families who were forced to move to the forest or other areas to return to their homes or to the "humanitarian refugee zones" established by those communities.

6. To request the State of Colombia to establish an ongoing supervision and communication mechanism at the so-called "humanitarian refugee zones", in accordance with the provisions of this Order.

7. To request the State of Colombia to allow the representatives designated by the beneficiaries of these measures to participate in the planning and implementation of protection measures and, in general, to keep them posted on progress made regarding the provisional measures passed by the Inter-American Court of Human Rights.

[...]

2. The Orders of the Inter-American Court of November 17, 2004, March 15, 2005 and February 7, 2006, whereby the Court ordered, *inter alia*, to call upon the State to maintain the provisional measures adopted, in accordance with the Order of March 6, 2003.

3. The briefs of the State of Colombia (hereinafter, "the State") of March 2, September 27 and November 20, 2007.

* Judge Manuel E. Ventura-Robles informed the Court that, due to force majeure circumstances, he would not be able to attend the public hearing on this matter, or the deliberations and signing of this Order.

4. The briefs of the representatives of the beneficiaries of the provisional measures (hereinafter, "the Inter-Ecclesiastical Justice and Peace Commission" or "the representatives") of May 29, 2007 and February 5, 2008.

5. The briefs submitted by 32 families of Puerto Lleras and Pueblo Nuevo of Jiguamiandó river basin of December 20, 2006, and January 16, 2008, and the briefs submitted by 177 families of the Community Councils of Curbaradó of October 1, 2007, and January 16, 2008, whereby they requested their "self-representation" for the purposes of processing these provisional measures.

6. The hearing was private in nature and was held on February 5, 2008¹ at the offices of the Inter-America Court, where the representative of the 32 families of Puerto Lleras and Pueblo Nuevo of Jiguamiandó river basin, and the representative of the 177 families of the Community Council of Curbaradó submitted their allegations regarding the recognition of these families as beneficiaries of the measures and their self-representation for the purposes of these proceedings. Moreover, at such hearing the representatives of the State, the Inter-Ecclesiastical Justice and Peace Commission and the Inter-American Commission submitted their observations in this regard.

WHEREAS:

1. Colombia ratified the American Convention on Human Rights (hereinafter, "the American Convention") on July 31, 1973, and recognized the contentious jurisdiction of the Court on June 21, 1985.

2. Article 63(2) of the American Convention provides that "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission".

3. On this matter, Article 25(2) of the Rules provide that: "With respect to a case not yet submitted to the Court, it may act at the request of the Commission".

¹ The following individuals attended the public hearing: a) For the families of the Communities of Jiguamiandó and Curbaradó: Fernando A. Vargas; Manuel Moya-Lara, and Graciano Blandón-Borja; b) for the Inter-American Commission: Santiago Canton, delegate, and Juan Pablo Albán, Karen Mansel and Lilly Ching, advisors; b) for the beneficiaries of the provisional measures:

Ligia María Chaverra, legal representative of the High Council of Curvaradó river basin (*Consejo Mayor de la Cuenca del Río Curvaradó*); Efrén Romaña, legal representative of the Council of Jiguamandó river basin (*Consejo de la Cuenca del Río Jiguamandó*); Germán Ivan Romero, and Danilo Rueda, representatives of the Inter-Ecclesiastical Justice and Peace Commission (*Comisión Intereclesial de Justicia y Paz*) and c) for the State:

Carlos Franco Echevarría, Director of the Presidential Human Rights Program (*Programa Presidencial para los Derechos Humanos*); Clara Inés Vargas-Silva, Director of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs; Lieutenant Juan Carlos Gómez-Ramírez, Director of Human Rights at the National Ministry of Defense; Eduth Claudia Hernández-Aguilar, Coordinator of Defense before international organizations for the National Ministry of Defense; Francisco Javier Echeverri-Lara, Director of the Office of International Affairs, General Prosecutor's Office; Liliana Romero, Advisor for the Office of International Affairs, General Prosecutor's Office, Janneth Mabel Lozano-Olave, Coordinator of Protection and Information for International Organizations, Board of International Humanitarian Law and Human Rights of the Ministry of Foreign Affairs; Jorge Rodríguez, Ministry of Defense, and Sandra Jeannette Castro-Ospina, Head of the National International Humanitarian Law and Human Rights Unit of the General Prosecutor's Office.

4. On December 20, 2006, and October 1, 2007, 32 families from Pueblo Nuevo and Puerto Lleras, and 177 families from the Community Council of Curbaradó, respectively, requested the Inter-American Court to be allowed to represent themselves regarding the provisional measures granted on this matter to 515 families and, for that purpose, both groups designated two individuals as representatives. Both groups reject and challenge the representation by the Inter-Ecclesiastical Justice and Peace Commission, and they requested to be granted the same guarantees provided to other displaced groups to access the "humanitarian zones" represented by such organization and direct communication with the State to agree on measures to their benefit. In that regard, the State informed the Court that it had received various petitions from those who claim to represent said families in order to have their representation recognized. In this sense, the Court was requested to indicate the name of the individual beneficiaries of these provisional measures to allow proper implementation thereof.

5. Through the Order of December 17, 2007, the President of the Court called a hearing to receive the arguments of the Commission, the representatives and the State on, *inter alia*, the determination and identification of the various individuals who compose the beneficiary families of the provisional measures and the representation of the families having requested so.

6. Through the briefs of January 18, 2008, Manuel Moya-Lara and Graciano Blandón-Borja requested the Court to "speed up the applicable legal processing to guarantee [their] attendance and brief participation" in the hearing to be held regarding the provisional measures ordered on this matter. In that regard, the Court in full, given the circumstances of the case, found convenient summoning Manuel Moya-Lara and Graciano Blandón-Borja to such hearing, as they were the spokesmen of the 177 Jiguamiandó families and 32 Curbaradó families, respectively, in order for the Court to obtain more elements to assess and identify the various individuals who conform the families beneficiaries of these provisional measures. The hearing was held privately, only for that specific purpose.

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7. As basis for the "self-representation" request on this matter, the members of the 32 families of Puerto Lleras and Pueblo Nuevo of Jiguamiandó river basin, and the 177 families of the Community Council of Curbaradó, stated that they belong to the group of beneficiaries mentioned in the provisional measures, in accordance with the Orders of the Inter-American Court of March 6, 2003, November 17, 2004, March 15, 2005 and February 7, 2006 (*supra* Having Seen clauses 1 and 2). The 32 families of Puerto Lleras and Pueblo Nuevo informed that they belong to the Community Council of Jiguamiandó river, despite having settled in the urban area of the Municipality of Carmen del Darién after their displacement. Moreover, the 177 families of the Community Council of Curbaradó indicated that they were "expelled from their ancestral lands, excluded from controlled and artificial return, and disseminated throughout the vast uprooting area". At the hearing, the members of these families indicated that they do not feel represented by the Inter-Ecclesiastical Justice and Peace Commission, only accredited representative before the Court during the validity of these provisional measures.

8. Through their brief of observations and at the hearing, the Inter-Ecclesiastical Justice and Peace Commission informed that it only represents 161 families that are beneficiaries of these provisional measures. As regards the “self-representation” request of the 32 and 177 families, it was stated that “the population represented by [the] Justice and Peace Commission does not consist of 515 families; i.e. 2125 individuals from the Communities of Jiguamiandó and Curbaradó. Such figure corresponds to the census carried out by the Colombian Institute of Agrarian Reform (*Instituto Colombiano de Reforma Agraria*), INCORA, to date the Institute for Rural Development (*Instituto de Desarrollo Rural -INCODER-*) since 2000. This official information was achieved based on the work carried out by INCORA as part of the joint-ownership assessment procedure carried out by the legal representatives of these communities, which were subject to forced displacement”. Furthermore, it was stated that “due to the socio-political violence events occurred since October 1996, to this date, afro Colombian individuals subject to the census have suffered uprooting and exile, thus having their identity and social network seriously affected. Forced displacement led to the settlement of various individuals and families in the municipal centers of Antioquía, Chocó, Valle, Cauca, Meta, among others”.

Lastly, they added that the 161 families they represent “include individuals who can be perfectly identified and have undertaken a life project to affirm their identity as country population of afro descent and mixed-race origin, and as civil population disclaiming any involvement in the conflict. These families claim their right to decent living conditions, to return to their lands and be restored their property, and to the protection of the environment in view of the illegal industrial development in their lands”. They indicated that they are aware that “the Orders on Provisional Measures passed by the Court refer to 515 families; however, since 2001, the aforementioned 161 families that share a life project were the ones that acted within the Inter-American System and took part in internal actions”.

9. At the hearing (*supra* Having Seen clause 6), the Inter-American Commission did not challenge the participation of the 32 and 177 families, respectively, in the Community Council of Jiguamiandó and Curbaradó, pursuant to their request for provisional measures submitted to the Court on March 5, 2003. That notwithstanding, on that regard the Commission indicated that “although it is true that at a certain time [...] it requested provisional measures regarding the number of families - 515 - as obtained from the records of a State public entity, INCODER, these provisional measures are aimed at benefiting an unspecified but specifiable group of individuals, and that determination may be performed based on some criteria established in the Order of the Court setting forth that protection measure and, particularly, it refers to the families that are related to the jointly-owned territory recognized under Law No. 70 that are engaged in community self-government practices, community life and active participation in that particular community’s lifestyle referred to in Jiguamiandó and Curbaradó.” Lastly, it stated that it is not “[p]ossible at this hearing to have a conclusive response on the situation at stage, [and informed] that, based on the allegations of third parties and the allegations of direct beneficiaries and petitioners [...] a written document on that matter could be submitted”.

10. The State requested the Court to determine the aspects of representation or participation of other beneficiaries in these measures. In that regard, it indicated that one of the defects in the ownership titles of the Communities of Jiguamiandó and Curbaradó consists in the lack of a census of the members of the basins and that “[h]as clearly impaired the ownership determination process”. For that reason, the

Commission was re-urged to clarify if provisional measures were requested for 515 families or, otherwise, to “[e]xpressly request a reassessment thereof”. The State reaffirmed its intention to work with all the members of the afro Colombian communities that “inhabit or have inhabited, and that should and must return to the Jiguamiandó and Curbaradó river basins”. Therefore, it emphasized that for the State it is very important to strengthen the natural organization of the afro Colombian population and the Community Councils and, in that sense, it requested the Court to render a decision on that matter that “[d]oes not strengthen division and that [...] contributes to reach a solution”.

11. The Court has ordered protection through provisional measures for various individuals who had not been nominated, provided they are identifiable and determinable, and subject to serious danger given their quality as members of a community².

12. Upon adopting these provisional measures, in the Order of March 6, 2003 (*supra* Having Seen clause 1, Whereas clauses 9 and 10), the Court found:

[...] In this case, as stated by the Commission, it becomes evident that the communities formed by the Community Council of Jiguamiandó and Curbaradó families, composed of approximately 2,125 individuals from 515 families, constitute an organized community, settled in a certain geographical location within the municipality of Carmen del Darién, Department of El Chocó, whose members can be identified and individualized, and that, as part of such community, they face similar risks of suffering attacks against their personal integrity and life, or being forcedly displaced from their territory, thus being prevented from exploiting the natural resources necessary for their subsistence. Therefore, the Court considers it is convenient to pass protection provisional measures to the benefit of the members of the communities composed by the Community Council of Jiguamiandó and Curbaradó families, in order to favor all members of the aforementioned communities.

[...] The situation undergone in the communities composed by the Community Council of Jiguamiandó and Curbaradó families, as described by the Commission, forced their members to move to the forest or other regions; therefore, it is necessary for the State to guarantee that those who benefit from these measures may continue living in their usual place of residence and provide the conditions necessary for the individuals displaced from such communities to return to their homes.

13. Given the request for “self-representation” of 32 and 177 families of the zone, at the hearing (*supra* Having Seen clause 6), the State claimed that one of the problems discussed upon organizing the community councils was the displacement of the residents of the area and census errors, all of which has a negative impact on the possibilities to determine and identify the beneficiaries of the measures and of effective implementation thereof. Furthermore, the representative challenged the census of 515 families, which constituted the basis for the request for provisional measures to the Commission and made reference to a lower number of people, apparently excluding some members of community councils. The Inter-American Commission indicated that it was not possible at the hearing “to have a conclusive response on the situation at stake”.

² Cf. *Matter of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the Inter-American Court of Human Rights of June 18, 2002, Whereas clause No. 8; and *Matter of the Jiguamiandó and Curbaradó Communities*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 6, 2003, Whereas Clause 9. Moreover, cf. *Case of Mayagna (Sumo) Awá Tingni Community*. Judgment of August 31, 2001. Series C No. 79.

14. Through the Order of March 6, 2003, the Court ordered provisional measures in favor of the members of the communities organized by the Community Council of Jiguamiandó and Curbaradó families as they were subject to identification and determination pursuant to the request of the Inter-American Commission. The Inter-American Commission based its request for provisional measures on the allegation that "the Community Council of Jiguamiandó and Curbaradó families include 2,125 individuals (515 families) of afro descent, whose jointly-owned territory covers 54,973 and 25,000 hectares, respectively, in the municipality of Carmen del Darién, Department of El Chocó [...]. The 2,125 members of the communities to whose benefit the provisional measures were requested, constitute identifiable human groups that compose the so-called 'Smaller Community Councils'; they have also been recognized by the [...] State". Moreover, according to the Commission, the State "has recognized joint ownership by these communities of their land, [...] and their self-government mechanisms" and their identity as civil population different from the participants of the internal armed conflict, "in regard of which they have undertaken a pacific and non-involvement stance". The Commission indicated that for several years now, the members of the communities were victims of harassment and violence aimed at having them forcefully displaced from their territory.

15. Given the various opinions expressed at the hearing, the Court finds that the universe of individuals who at this time form part of the beneficiary communities cannot be accurately identified or established. The criteria submitted by the Commission in its request for provisional measures are indeed insufficient for that purpose. Particularly, at this time the geographical standards for the group of individuals who allegedly benefit from these provisional measures are not clear enough.

16. As set forth in Articles 63(2) of the American Convention and 25(2) of the Rules of the Court, the Commission may request the Court to adopt provisional measures in those cases that have not yet been submitted to the Court. Therefore, the Inter-American Commission should specify to the Court what is the universe of individuals who benefit from these provisional measures, which were adopted at their request. To that effect, the Commission must indicate specific criteria to determine and identify the beneficiaries of these measures as a group. Notwithstanding the above and until the Court renders a decision, the measures already adopted by the Court in its Order of March 6, 2003 (*Operating Paragraph 1*) remain fully in force and the subsequent Orders of November 17, 2004, March 15, 2005, and February 7, 2006 (*supra* Having Seen clauses 1 and 2) reinforce the obligation of the State to promptly adopt any measures necessary to protect the life and personal integrity "[o]f all members of the communities formed by the Community Council of Jiguamiandó and Curbaradó families".

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

exercising the powers conferred upon it by Article 63(2) of the American Convention on Human Rights, and Articles 25 and 29 of the Rules of Procedure of the Court,

DECIDES,

1. To request the Inter-American Commission of Human Rights to submit, no later than June 2, 2008, its opinion on the universe of individual beneficiaries of these measures, in accordance with Whereas clause 16 of this Order.

2. To maintain the provisional measures determined by the Court in its Order of March 6, 2003, and the Orders of November 17, 2004, March 15, 2005, and February 7, 2006 (*supra* Having Seen clauses 1 and 2) regarding the obligation of the State to promptly adopt any measures necessary to protect the life and personal integrity “[o]f all members of the communities integrated by the Community Council of Jiguamiandó and Curbaradó families”.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Leonardo A. Franco

Margarette May-Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary