

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JANUARY 30, 2007**

**PROVISIONAL MEASURES
WITH REGARD TO THE REPUBLIC OF COLOMBIA**

MATTER OF THE INDIGENOUS COMMUNITY OF KANKUAMO

HAVING SEEN:

1. The July 5, 2004 Order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") in which it resolved, *inter alia*:

1. To require the State to adopt, without delay, measures necessary to protect the life and the personal integrity of all members that compose the indigenous community of Kankuamo.

2. To require the State to investigate the facts that led to the adoption of these provisional measures, with the aim to identify those responsible and to impose the corresponding sanction.

3. To require the State to guarantee security conditions necessary to respect the freedom of movement of persons from the Kankuamo indigenous community and to guarantee the return of its members who have been forced to flee to other regions, should they desire it.

4. To require the State to allow the beneficiaries of these measures to participate the planning and implementation of said measures and, in general, to keep the beneficiaries informed about the progress in the execution of the measures ordered by the Inter-American Court of Human Rights.

[...]

2. The communications submitted by the State of Colombia (hereinafter "the State") on August 3, 2004, August 18, 2004, November 8, 2004, May 25, 2005, August 12, 2005, and March 28, 2006, in which they informed, *inter alia*:

a) regarding to the adoption of measures necessary to protect the life and the personal integrity of all members that compose the indigenous community of Kankuamo, that:

i. the State has increased its presence in the Sierra Nevada de Santa Marta region, which has allowed for both the protection of the communities and the economic infrastructure of the region. Since February 7, 2004, the National Armed Forces [Ejército Nacional] has maintained a permanent

presence on the indigenous reservation, as requested by the community. The Public Defender of Sierra Nevada has also maintained the presence of two "Community Defenders" [Defensores Comunitarios]. Situations that have given rise to risks to the Community have been managed by the Public Force and National Police;

ii. the State has implemented individual and collective measures, in Bogotá as well as in Valledupar, to safeguard the life and the personal integrity of members of the community, such as: the temporary relocation of 21 persons; the assignment of Avantel communication services to 19 persons and mobile phones to 10 persons; the allocation of 4 satellite communication devices to the communities; ground transportation for more than 10 persons; airline tickets for 25 persons to temporarily leave a risk area; the provision of armored protection for the headquarters office of the Indigenous House, and the implementation of security councils and an Indigenous Community Council [Consejo Comunal Indígena] with participation of the President of the Republic. Additionally, as of May 25, 2005, the Ministry of Justice and the Interior [Ministerio del Interior y Justicia] had arranged airline tickets in order to relocate the Mamos – spiritual leaders – to Bogotá;

iii. the State had adopted measures relative to the protection of health and food security for the community, and

iv. the detention of Kankuamo community members accused of affiliation to the illegal armed group Revolutionary Armed Forces of Colombia (FARC) does not constitute a response or retribution for the attack with explosives allegedly committed by the FARC on August 1, 2005 in Ataquez that killed 14 national police officers; said detentions were not carried out as reprisals but were ordered in the context of a criminal proceeding with corresponding legal safeguards.

b) regarding to the investigations concerning the events that motivated the adoption of the present provisional measures and with an aim to identify those responsible and, when appropriate, to impose the corresponding sanction, that:

i. from 1986 to October of 2004, the Technical Investigative Body [Cuerpo Técnico de Investigación] established that one hundred and seventy five (175) members of the Kankuamo ethnic group seemed to have been killed by illegal armed groups, such as the United Self-Defense Forces of Colombia, the ELN and the FARC, that operate within the region;

ii. as of November 2004, preliminary investigations were still open regarding the alleged genocide of the Kankuamo community, under case number 162690 of May 5, 2004;

iii. as of April 4, 2006, the Office of International Affairs within the Attorney General's Office [Dirección de Asuntos Internacionales de la Fiscalía General de la Nación], the Presidential Program and the Office of Human Rights within the Ministry of Foreign Relations [Dirección de Derechos Humanos del Ministerio de Relaciones Exteriores] were monitoring and tracking the number of criminal investigations concerning incidents that affect members of the Kankuamo community, and

- iv. various investigations against members of the National Armed Forces [Fuerza Pública], the Police and the United Self-Defense Forces are in progress.
- c) regarding the obligation to guarantee security conditions necessary to respect the freedom of movement of persons from the Kankuamo indigenous community and to guarantee the return of its members who have been forced to flee to other regions, should they desire it, that:
- i. the National Armed Forces [Fuerza Pública] has guaranteed the security of various displaced families. These families have received nutritional, psychological and medical care through the Social Solidarity Network of Cesar [Red de Solidaridad Social del Cesar], and
 - ii. as of April 4, 2006, a total investment of 2,648,339.674 Colombian pesos had been made for the Kankuamo.
- d) regarding to the participation of the petitioners in the planning and implementation of the measures, that:
- i. the State had maintained constant communication with the beneficiaries through formal meetings and informal contacts, including the implementation of Security Councils with the communities, and that there exists continuous dialogue that had produced various actions. As of March 21, 2006, various meetings had taken place in the Kankuamo indigenous reservation as well as in the city of Bogotá.
 - ii. as of May 25, 2005, and in agreement with the community, a Working Group composed of national, state and local entities as well as the petitioners and the Kankuamo Indigenous Organization was established. The Group has approved various commitments that relate to different projects to be completed;
 - iii. on April 21, 2004, the Vice Minister of Defense met with the Indigenous Governor [Cabildo Gobernador] and other Kankuamo leaders to discuss the advances made with regard to the action plan produced by the Security Council. On June 12, 2004, the President of the Republic presided over the Indigenous Communal Council [Consejo Comunal Indígena] in Nabusimake, attended by the communities of Sierra Nevada. On August 20, 2004, the Vice President of the Republic met with civilian and military authorities in Santa Marta to analyze the situation in Sierra Nevada de Santa Marta, and
 - iv. in a meeting on February 1, 2006, in the city of Bogotá and attended by the entities of the Working Group, the Kankuamo Community acknowledged the work of the authorities and the Armed Forces [Fuerza Pública], and the Indigenous Governor [Cabildo Gobernador] expressed his satisfaction with the actions undertaken by the State and recognized the fulfillment of the agreements reached with the Community.

3. The communications submitted by the representatives of the beneficiaries (hereafter, "the representatives") on August 9, 2004, October 26, 2004, November 27, 2004, July 8, 2005, and August 24, 2006, by means of which they stated, *inter alia*:

a) regarding to the adoption of measures necessary to protect the life and the personal integrity of all members that compose the indigenous community of Kankuamo, that:

i. since the beginning of 2004 to July 2005, several members of the Kankuamo community were assassinated, many of them after the Court issued its Order. Among those killed were Freddy Antonio Arias Arias, on August 3, 2004, or on September 3, 2004; Víctor Hugo Maestre in early October 2004; Héctor Pacheco Montero on November 5, 2004; Pervis Pacheco on November 8, 2004; Rafael Cristóbal Arias on November 15, 2004; on February 7, 2005, Hermes Enrique Montero and his wife Noemí Pacheco Zabatá – who was 13 years old and pregnant; Claudino Arlantt on May 15, 2005; José Luis Carrillo Maestre on July 1, 2005, and Jaider Julio Mendoza Maestre, between July 3 and 5, 2005. Further, Euclídes Sanchez Calderon and Wilmen José Arias Mendoza remain disappeared since May 2005;

ii. on September 15, 2005, Gabriel Turbay Alvarado, elder of the Community of Atánquez, who was arbitrarily detained together with various members of the Community on November 24, 2004, died while being deprived of his liberty, due to the fact that his health problems were not properly treated;

iii. on July 7, 2006, Duvier Daniel Villazón, an adolescent of 14 years and member of the Kankuamo Indigenous Community, suffered a physical attack by two police officers while staying with his family in Bogotá, having been forcibly displaced to that city as a consequence of the armed conflict;

iv. the increase of the State's presence in the region has been predominantly military in nature, to the detriment of the cultural and territorial rights of the members of the Kankuamo indigenous community, which in addition puts the community at risk by transforming civilian property into potential military objectives for the guerrillas;

v. a series of homicides of members of the ethnic group have been attributed to the Armed Forces [Fuerza Pública]. These deaths have been misleadingly presented to the public as "homicides in combat", and

vi. the position of "Corregidor", or Police Inspector, persists, and thereby ignores the authority exercised in each community by the Lower Councils [Cabildos Menores].

b) regarding the investigations concerning the events that motivated the adoption of the present provisional measures and with an aim to identify those responsible and, when appropriate, to impose the corresponding sanction, that despite evidence that public forces had violated the right to life, those responsible had not been identified, investigated, or punished as of August 24, 2006.

c) regarding the obligation to guarantee security conditions necessary to respect the freedom of movement of persons from the Kankuamo indigenous community and

to guarantee the return of its members who have been forced to flee to other regions, should they desire it, that:

- i. the National Army [Ejército Nacional] has been restricting the mobility of the Reservation's population, demanding permits and establishing schedules within the territory;
- ii. the representatives demand that the National Army [Ejército Nacional] reach an agreement with the indigenous authorities concerning the transit through and presence of troops in the Reservation;
- iii. as of November 27, 2004, no clear and coordinated action plan existed in order to prevent the forced displacement of the community, and, despite having increased mobility within the Reservation, fear and terror continued to affect the Kankuamo territories;
- iv. as of November 27, 2004, appropriate measures had been adopted in order to guarantee the transportation of indigenous leaders under secure conditions;
- v. as of August 9, 2004, the State had not paid sufficient attention to displaced Kankuamo, such that they could live in conditions compatible with their culture and human dignity; likewise, the food blockade remained and time restrictions on movement within the area still existed, which conflict with Kankuamo customs, and
- vi. as of August, 24, 2006, the State had developed a series of favorable investments and actions in the Sierra Nevada de Santa Marta which benefited the indigenous people and the rural communities of the region.

d) regarding the participation of the petitioners in the planning and implementation of the measures, that:

- i. working groups and security councils had been created with the participation of the beneficiaries and the local and national authorities, and
- ii. on October 1, 2005, the Kankuamo Indigenous Organization submitted a proposal for the implementation of the Provisional Measures to which, as of August 24, 2006, the State had not fully responded.

4. The communications submitted by the Inter-American Commission of Human Rights (hereafter, "the Inter-American Commission" or "the Commission") on August 5, 2004, August 11, 2004, March 18, 2005, September 7, 2005 and June 29, 2006, in which they stated, *inter alia*:

a) regarding the adoption of measures necessary to protect the life and the personal integrity of all members that compose the indigenous community of Kankuamo, that:

- i. it understands that the examination of the suitability of the measures adopted in the present case demonstrates a particular complexity due to the lifestyle of the Kankuamo people, as well as the origin of the risks affecting them. These risks include the actions of illegal armed groups -the AUC and

the guerrillas-, who act within the context of an armed conflict, as well as the proper Armed Forces [Fuerza Pública]. As a result, the Commission observes that the solution to this problem requires a holistic consideration of the dynamics prevailing between all of the actors in the armed conflict and the civil population;

ii. the measures allegedly adopted by the State in order to protect the leaders and authorities of the Kankuamo, such as the increased number of patrols around the residence of the Indigenous Governing Council [Cabildo Gobernador], the provision of escorts for the Council, as well as the coordination of ground transport, the provision of means of communication, cell phone, and national air tickets, should tend to facilitate the development of a holistic protection scheme;

iii. it is concerned about reports of other homicides and detentions of Kankuamo individuals in response to an explosion on August 1, 2005 in which 14 members of the National Police died;

iv. it considers the designation of a community defender for the Sierra Nevada de Santa Marta as a positive step. Likewise, the Commission understands that other mechanisms for accompaniment should be explored, such as inter-institutional commissions and international organizations, with the objective of providing protection to the beneficiaries, and

v. it appreciates the detailed information provided by the State with regard to a series of activities developed for the purpose of addressing the needs of the Kankuamo in the areas of health, education, and food security.

b) regarding the investigations concerning the events that motivated the adoption of the present provisional measures and with an aim to identify those responsible and, when appropriate, to impose the corresponding sanction, that:

i. as of September 7, 2005, no significant advances existed in the investigation of the acts of violence against the Kankuamo people, and

ii. it welcomed the creation of a comprehensive list of crimes allegedly committed against the Kankuamo.

c) regarding the obligation to guarantee security conditions necessary to respect the freedom of movement of persons from the Kankuamo indigenous community and to guarantee the return of its members who have been forced to flee to other regions, should they desire it, that:

i. in the two years prior to August 11, 2004, more than 300 families had been displaced. The families that have remained in the territory have been subjected to food blockades and restrictions on their freedom of movement, and

ii. as of September 7, 2005, the Commission could not conclude that there were concrete results with regard to the measures adopted to guarantee the conditions necessary to promote the safe return of the displaced.

d) regarding the participation of the petitioners in the planning and implementation of the measures, that:

- i. as of September 7, 2005, the Commission recognized the will of the State to participate in a dialogue regarding an agreement on a working program, and
- ii. it appreciates the information provided by the State in this respect.

5. The December 7, 2006 Order of the President of the Court by which it decided, *inter alia*, to convoke the Commission, the representatives of the beneficiaries, and the State, to a public hearing to be held at the Court's seat on January 26, 2007, beginning at 3:00 p.m., in order to hear arguments regarding the implementation of the provisional measures at issue.

6. At the public hearing on the implementation of the provisional measures, held at the Inter-American Court on January 26, 2007, the following individuals participated: a) for the Inter-American Commission: Victor Abramovich, delegate; Ariel Dulitzky, legal counsel; Verónica Gómez, legal counsel, and Lilly Ching, legal counsel; b) for the representatives: Eduardo Carreño Wilches, "José Alvear Restrepo" Legal Aid Corporation [Corporación Colectivo de Abogados "José Alvear Restrepo"]; Rafael Barrios Mendivil, "José Alvear Restrepo" Legal Aid Corporation [Corporación Colectivo de Abogados "José Alvear Restrepo"]; Jomary Ortegón Osorio, "José Alvear Restrepo" Legal Aid Corporation [Corporación Colectivo de Abogados "José Alvear Restrepo"], and Jaime Enrique Arias Arias, Kankuamo Indigenous Governor [Cabildo Gobernador del Pueblo Kankuamo]; c) for the State: Carlos Franco, Director of the Presidential Program for Human Rights [Programa Presidencial para los Derechos Humanos]; María Fernanda Cabal Molina, Director of International Affairs for the Office of the Attorney General of the Nation [Asuntos Internacionales de la Fiscalía General de la Nación]; Rafael Bustamante Pérez, Director of the Human Rights Department of the Ministry of the Interior and of Justice [Dirección de Derechos Humanos del Ministerio del Interior y de Justicia]; Coronel Juan Carlos Gómez, Coordinator for Human Rights at the Ministry for National Defense [Ministerio de Defensa Nacional]; Coronel Efraín Oswaldo Aragón, Coordinator for Human Rights for the National Police [Policía Nacional]; Hernando Molina Araujo, Governor of the Department of Cesar [Gobernador del Cesar]; Carlos Andrés Hinojosa, Legal Counsel for the Government of the Department of Cesar [Asesor de la Gobernación del Cesar]; Janneth Mabel Lozano Olave, Coordinator for DH-OEA affairs, Department of Human Rights and International Humanitarian law of the Chancellery [Asuntos de DH-OEA, Dirección de Derechos Humanos y Derecho Internacional Humanitario de la Cancillería]; Laura Benetti, Legal Counsel for the Department of International Affairs for the Office of the Attorney General of the Nation [Dirección de Asuntos Internacionales de la Fiscalía General de la Nación]; Edith Claudia Hernández, Legal Counsel for the Coordination of Human Rights at the Ministry for National Defense [Asesora de la Coordinación de Derechos Humanos del Ministerio de Defensa Nacional]; Edwar Alvarez, Legal Counsel for the Office of the High Commissioner for Social Action and International Cooperation [Asesor de la Alta Consejería para la Acción Social y la Cooperación Internacional]; Camilo Ospina, Colombian Ambassador to the Organization of American States, and Margarita Rey, Second Secretary, Colombian Mission before the Organization of American States [Segunda Secretaria, Misión de Colombia ante la Organización de Estados Americanos].

7. The arguments put forward by the Commission at the public hearing (*supra* Having Seen 6), in which it reiterates its position from its previous briefs (*supra* Having Seen 4), and emphasized:

a) regarding the adoption of measures necessary to protect the life and the personal integrity of all members that compose the indigenous community of Kankuamo, that:

i. the number of killings of members of the community has decreased. Nevertheless, in spite of the measures that are in force by order of this Court, records show 20 murders of community members, 4 cases of forced disappearance, as well as the proliferation of other forms of harassment against this indigenous community, such as threats, food blockades and arbitrary detentions of social leaders and members of the communities;

ii. it is of vital importance that the framework of measures for the protection of life and physical integrity of the petitioners incorporates a perspective of the cultural identity of the Kankuamo indigenous community as it relates to their intimate relationship with their ancestral territory;

iii. there continue to be reports and complaints with regard to the failure to take into account the ethnicity of those registered in the displaced population registry, as well as in the context of the policies that are implemented, and

iv. it welcomes all of the efforts to effectively implement the provisional measures. Nonetheless, the risk factors that justified the provisional measures for the protection of the Kankuamo people in 2004 persist in the region. Illegal groups continue to operate in the region, several members of the public forces are under investigation, 400 individuals remain displaced, and the events that led to these provisional measures continue to enjoy impunity, which encourages the repetition of the events. Moreover, problems persist with regard to the coordination of the several agencies responsible for the implementation of the provisional measures.

b) regarding the investigations concerning the events that motivated the adoption of the present provisional measures and with an aim to identify those responsible and, when appropriate, to impose the corresponding sanction, that:

i. advances have been limited; a situation of continuing impunity exists that could favor the repetition of the events, and

ii. the State must establish better forms of coordination between the prosecutors that are investigating the events.

c) regarding the obligation to guarantee security conditions necessary to respect the freedom of movement of persons from the Kankuamo indigenous community and to guarantee the return of its members who have been forced to flee to other regions, should they desire it, that:

i. only ten percent of 400 displaced families have returned to their homes, and the rest continue to live in a situation of displacement, and

ii. the humanitarian assistance provided to the displaced population should extend in time to last through the situation of displacement until the moment in which conditions exist to allow for the return to their ancestral territory.

d) regarding the participation of the petitioners in the planning and implementation of the measures, that:

i. all measures of security and social and humanitarian policy must be adopted with the prior agreement of authorities that represent the affected communities;

ii. it recognizes the efforts carried out by the State to establish a scenario and framework of dialogue with the beneficiaries and with the different State and local authorities involved, both in the territory and in the cities where the displaced population live, and in particular to the operation of the Office of the Community Defender [Oficina del Defensor Comunitario], and

iii. it cautions of weakness in the implementation mechanism for the provisional measures and the necessity to generate greater participation on the part of officials in the Working Group and to equip them with a greater capacity to assume commitments on behalf of the State in order to speed up decision making and the implementation of protection policies.

8. The arguments put forward by the representatives at the public hearing (*supra* Having Seen 6), in which they reiterate their position from their previous briefs (*supra* Having Seen 3), and emphasized:

a) regarding the adoption of measures necessary to protect the life and the personal integrity of all members that compose the indigenous community of Kankuamo, that:

i. despite the evident drop in selective homicides after the implementation of provisional measures, at least 20 indigenous Kankuamos have been murdered and 4 have been victims of forced disappearance;

ii. serious violations and risks to the life and physical integrity continue, not only for the individuals, but also for the Kankuamo indigenous community as a collective entity, due to the impunity that exists regarding the alleged violations, and to the failure to effectively dismantle the military, social, political and economic structures that led to the rise of paramilitarism in the Sierra Nevada de Santa Marta Region;

iii. in the last three years, there were at least 50 incidents of arbitrary detention of Kankuamo indigenous community members; all were accused of allegedly committing the crime of rebellion. All of the corresponding proceedings have been judicial charades built on the foundation of false informants. There have also been cases of torture and detention in unsanitary conditions, as well as violations of personal integrity, including shaving the heads of the detained and restrictions on the use of the "poporo", a gourd traditionally used by the indigenous groups of the Sierra Nevada de Santa Marta region;

iv. violations of the right to life have been reduced, but during the period covered by the provisional measures, the State has not implemented structural changes that tend to prevent new situations of risk;

v. the State must implement public, holistic and adequate policies that guarantee the respect, recognition, strengthening and protection of the Kankuamo indigenous community's autonomy, own governance, cultural integrity and identity and its special relationship to its territory as fundamental elements of a dignified life at both the material and spiritual level;

vi. before the adoption of provisional measures, the State had been absent in the Kankuamo territory for a period of more than ten years. Since the adoption of provisional measures, State presence has increased through programs of social development, such as health care, child welfare, economic production, education, and road construction, among other projects;

vii. the representatives believe that the State would not adopt the same actions, nor would it have had the will to undertake the same actions, without the enforcement of provisional measures, and

viii. the risk factors that prompted the provisional measures not only persist, they also could tend to aggravate if effective measures and a holistic policy for protection of the Kankuamo are not undertaken.

b) regarding the investigations concerning the events that motivated the adoption of the present provisional measures and with an aim to identify those responsible and, when appropriate, to impose the corresponding sanction, that:

i. the State has failed to carry out disciplinary investigations against civilian and military authorities who, during many years, were aware of the risks to the Kankuamo indigenous community and failed to adopt effective measures of protection;

ii. it was not until January 26, 2007, that a colonel who was being investigated for serious human rights violations against the Kankuamo was suspended;

iii. at present, there is no investigation, prosecution or sanction for the crimes committed against the Kankuamo; of the 228 murders, only one person has been condemned. Not one member of the Public Force has been condemned or disciplinarily sanctioned. Further, no investigation has been carried out in connection to the omissions by the civilian authority that permitted the commission of these crimes, and

iv. more than 90 percent of the investigations, 111 in total, have been filed away or suspended.

c) regarding the obligation to guarantee security conditions necessary to respect the freedom of movement of persons from the Kankuamo indigenous community and to guarantee the return of its members who have been forced to flee to other regions, should they desire it, that:

- i. the Kankuamo indigenous community has suffered the displacement of almost one half its population due to the armed conflict;
- ii. in the period 2005-2006, threats increased, especially against Kankuamo leaders. As a result, many were forcibly displaced;
- iii. the militarization of the territory has been accompanied by several restrictions on the personal liberty and freedom of movement of the Kankuamo;
- iv. actions such as the control of schedules and activities by the Army and National Police have affected the freedom of movement of the groups living in the mountains;
- v. more than 400 families have been displaced to 4 main urban centers, and a holistic policy for socio-economic stabilization for these individuals does not exist, and
- vi. the displaced person recording system, apart from not recording the ethnicity of those affected, does not register individuals who have been the victim of forced displacement by State authorities.

d) regarding the participation of the petitioners in the planning and implementation of the measures, that:

- i. due to the efforts as a whole between the State, the Kankuamo Community and the petitioners, important advances have been achieved within the implementation framework of the provisional measures;
- ii. in spite of these important advances, the implementation process lacks definitive monitoring of previous commitments, and holistic and adequate public policies to recognize and protect the Kankuamo's own leadership, cultural integrity and identity, and its special relationship to its territory;
- iii. there is concern as to the minimal commitment various State entities have shown in their reception and implementation of agreements and established commitments, and
- iv. adequate compliance with the provisional measures should be done with due respect to the autonomy, identity, self-governance, traditions, and culture of the Kankuamo people, recognizing the special relationship that they have with their land.

9. The arguments put forward by the State at the public hearing (*supra* Having Seen 6), which reiterate its position from its previous briefs (*supra* Having Seen 3) emphasize:

- a) regarding the adoption of measures necessary to protect the life and the personal integrity of all members that compose the indigenous community of Kankuamo, that:
 - i. the collaborative efforts by the petitioners, beneficiaries and organs of the State have resulted in the full compliance of the measures ordered by the Court;

- ii. in 2006, not one member of the Kankuamo indigenous community died;
 - iii. the State has established greater control over the zone and brought about a training program for the Public Force to better enable respect for indigenous customs and their authorities;
 - iv. from 2004 to the present, the State has distributed more than 9,150 million Colombian pesos for the Kankuamo indigenous community, which has allowed for improved infrastructure, health and education within the Reservation;
 - v. the Court should not convert the monitoring mechanism under provisional measures into a discussion about the public policies of every State organ that affects the Kankuamo population;
 - vi. the measures ordered have accomplished their objective. The Court should be satisfied with the contributions made to the Kankuamo population and the different State entities who have worked together to change the situation that first motivated the adoption of provisional measures. Based upon this change, the State requested the Court to lift the provisional measures;
 - vii. in spite of certain aspects that deserve the State's attention relating to the displaced population, impunity, the betterment of conditions on the Reservation, and the recovery of the ethnic history and culture of the Kankuamo, among other matters, the State considers that this labor can continue under domestic mechanisms of the State and not necessarily under the mechanism of provisional measures, which already served its purpose to aid a situation of extreme gravity and urgency, and
 - viii. provisional measures should have a temporal and exceptional character, which ceases to exist if there are no special and specific circumstances aimed at preserving the rights recognized in the Convention.
- b) regarding the investigations concerning the events that motivated the adoption of the present provisional measures and with an aim to identify those responsible and, when appropriate, to impose the corresponding sanction, that:
- i. the National Unit on Human Rights and International Humanitarian Law [Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario] has moved forward 15 investigations, of which 8 are currently in the preliminary stage and 4 are currently in the preliminary hearing stage; 17 suspects are connected to these investigations, of whom 8 are members of the Public Force and others belong to paramilitary groups;
 - ii. in the Ordinary Prosecutor of Valledupar [seccional de Fiscalía de Valledupar] casework currently includes 71 investigations, of which 35 are in the preliminary stage, 8 in the preliminary hearing stage, 3 in the judgment stage and 3 in the sentencing phase. The investigations include members of the guerrilla, members of the United Self-Defense Forces of Colombia, members of the Kankuamo Community and there are also investigations into

the participation and responsibility of members of the Armed Forces [Fuerza Pública];

iii. driven by a special committee, the monitoring and reactivation of various investigations that could not be finalized in 2006 due to budgetary problems is estimated to commence its first phase in May 2007;

iv. on January 26, 2007, a colonel in the Popa Battalion who is being investigated by authorities on events that happened in the region was removed from his post, and

v. impunity from prosecution concerning the events that motivated the adoption of these measures does not justify the continuation of said measures because the problem is not a lack of State guarantees of protection. The State has a policy to fight against impunity.

c) regarding the obligation to guarantee security conditions necessary to respect the freedom of movement of persons from the Kankuamo indigenous community and to guarantee the return of its members who have been forced to flee to other regions, should they desire it, that:

i. forced displacement from the Region has decreased considerably;

ii. some Kankuamo people who have been displaced do not desire to return to the Reservation, and

iii. the total number of people displaced today represents 10 percent of displaced persons in years past.

d) regarding the participation of the petitioners in the planning and implementation of the measures, that:

i. the Working Group has visited the Reservation seven times to implement the measures; the Working Group has prompted 12 meetings designed to monitor progress and has respected the internal processes of the Kankuamo indigenous community, and

ii. the measures have allowed the establishment of responsive communication mechanisms between the local and Kankuamo indigenous community authorities, as well as between civilian and military authorities and the Kankuamo indigenous community.

10. The documents presented by the Representatives and the State at the public hearing.

CONSIDERING:

1. Colombia has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since July 31, 1973 and, in accordance with Article 62 of the Convention, 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 regard to a case not yet submitted to the Court, it may act at the request of the Commission”.

3. According to Article 25 of the Rules of Procedure of the Court (hereafter, “the Rules of Procedure”):

1. [a]t any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention [; and]

[...]

6. [t]he beneficiaries of provisional measures or urgent measures ordered by the President may address their comments on the report made by the State directly to the Court. The Inter-American Commission of Human Rights shall present observations to the State’s report and to the observations of the beneficiaries or their representatives.

4. Article 1(1) of the Convention imposes on States Parties the obligation to respect the rights and freedoms set out in that treaty and to ensure to all persons subject to their jurisdiction the free and full exercise of said rights and freedoms. This entails, as the Court has stated, that said general obligation is imposed not only in relation to the State’s power, but also in relation to the actions of third parties, including irregular armed groups of any nature¹.

5. In International Human Rights Law, provisional measures are not only precautionary in the sense that they preserve a legal situation, but fundamentally protective because they protect human rights, inasmuch as they seek to avoid irreparable damage to persons. Provisional measures may be applied whenever the basic requirements of extreme gravity and urgency are met, together with the need to prevent irreparable damage to persons. In this way, provisional measures are transformed into a true jurisdictional guarantee of preventative character.²

6. The merits of the case that gave rise to the present provisional measures are not before the Court, and the adoption of provisional measures does not imply any decision on those merits or the controversy between the petitioners and the State. When ordering provisional measures, the Tribunal is only exercising its authority under the Convention to require the State to take protective action to avoid irreparable damage to individuals in situations of extreme gravity and urgency.³

¹ Cf. *Matter of Children Deprived of Liberty in the “Complexo do Tatuapé” of FEBEM*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, Ninth Considering; *Matter of Yare I and Yare II Capital Region Penitentiary Center*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 30, 2006, Fourteenth Considering ; and *Matter of The Communities of Jiguamiandó and Curbaradó*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 7, 2006, Sixth Considering.

² Cf. *Matter of Giraldo-Cardona*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 29, 2006, Fifth Considering; *Case of the Plan de Sánchez Massacre. In favor of the members of the team of communitarian and psychosocial action studies (ECAP)*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 25, 2006, Sixth Considering; and *Matter of the persons imprisoned in the “Dr. Sebastião Martins Silveira” Penitentiary in Araraquara, São Paulo, Brazil*. Provisional Measures. Order of the Inter-American Court of Human Rights of September 30, 2006, Fifth Considering.

³ Cf. *Matter of Giraldo-Cardona*. Provisional Measures, *supra* note 2, Sixth Considering; *Matter of the persons imprisoned in the “Dr. Sebastião Martins Silveira” Penitentiary in Araraquara, São Paulo, Brazil*. Provisional

7. Provisional measures have an exceptional character, are ordered pursuant to the need for protection, and, once ordered, should remain in force whenever the Court considers that the basic requirements of extreme gravity, urgency, and the need to prevent irreparable damages to the rights of those protected by the measures, subsist.⁴

8. Article 63(2) of the Convention obligates the State to fulfill in good faith (*pacta sunt servanda*) the provisional measures ordered by this Tribunal. This obligation is also a basic principle of the law of State responsibility, which is backed by international jurisprudence.⁵

Measures, *supra* note 2, Seventh Considering; and *Case of Gloria Giraldo de García Prieto et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of September 26, 2006, Fifth considering.

⁴ Cf. *Matter of Giraldo-Cardona*. Provisional Measures, *supra* note 2, Seventh Considering; *Case of the Plan de Sánchez Massacre. In favor of the members of the team of communitarian and psychosocial action studies (ECAP)*. Provisional Measures, *supra* note 2, Eighth Considering; and *Case of Carlos Nieto et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of September 22, 2006, Sixth Considering.

⁵ Cf. *Matter of Giraldo-Cardona*. Provisional Measures, *supra* note 2, Eighth Considering; *Case of the Plan de Sánchez Massacre. In favor of the members of the team of communitarian and psychosocial action studies (ECAP)*. Provisional Measures, *supra* note 2, Ninth Considering; and *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo, Brazil*. Provisional Measures, *supra* note 2, Nineteenth Considering.

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9. Based on the information provided by the parties, particularly in the public hearing (*supra* Having Seen 7 to 10), it is apparent that the provisional measures ordered by this Tribunal (*supra* Having Seen 1) are producing some of the desired effects with regard to the protection of the life and the personal integrity of the members of the Kankuamo Indigenous Community (*supra* Having Seen 7(a)(i), 8(a)(i), and 9(a)(ii).

10. The Court appreciates, welcomes, and recognizes the efforts made by the State and by the beneficiaries and their representatives, individually and jointly, with regard to the effective implementation of the measures ordered by this Tribunal. Specifically, the Tribunal recognizes that in 2006, not a single beneficiary died as a result of the circumstances that prompted the adoption of the present provisional measures (*supra* Having Seen 9(a)(ii). Likewise, the State's presence in the region of the Sierra Nevada de Santa Marta has favored the protection of the beneficiaries as well as a substantial improvement in the region's infrastructure (*supra* Having Seen 2(a)(i), 3(c)(vi), 8(a)(vi) and 9(a)(iv). In the same way, the Court considers as a positive step the presence of the Public Defender in the Sierra Nevada through two "Community Defenders" [Defensores Comunitarios] (*supra* Having Seen 2(a)(i) and 4(a)(iv). The State has likewise provided the beneficiaries with transportation and communication devices as a measure of protection for them (*supra* Having Seen 2(a)(ii) and 4(a)(ii). At the same time, the Tribunal recognizes the efforts undertaken by the State in order to attend the beneficiaries' health and food necessities (*supra* Having Seen 2(a)(iii), 4(a)(v), and 8(a)(vi). Moreover, some of the displaced families have received support through the Social Solidarity Network of Cesar [Red de Solidaridad Social del Cesar] (*supra* Having Seen 2(c)(i). Lastly, the creation of working groups and the meetings held between national and local state institutions, and the beneficiaries, have resulted in positive advances aimed at the effective implementation of some of the measures ordered (*supra* Having Seen 2(d)(i), 2(d)(ii), 2(d)(iii), 2(d)(iv), 3(d)(i), 4(d)(i), 7(d)(ii), 8(d)(i) and 9(d).

11. During the public hearing held on January 26, 2007, at the seat of the Court, the State requested the lifting of the provisional measures. In this regard, the Court finds that, despite the aforementioned significant progress in the effective implementation of the measures ordered (*supra* Considering 10), 20 members of the Kankuamo indigenous community have been allegedly assassinated since the date on which the measures were ordered, 50 members have allegedly been arbitrarily detained, and four cases of forced disappearance have been reported, as well as several threats against leaders of the Community (*supra* Having Seen 4(a)(iii), 7(a)(i), 8(a)(1), 8(a)(iii), and 8(c)(ii). Likewise, according to the State's own admission, impunity still exists with regard to the events which prompted the adoption of the present provisional measures, especially with regard to the alleged violations of the right to life, personal integrity, and personal liberty (*supra* Having Seen 7(b)(i), 8(b)(i), 8(b)(ii), 8(b)(iv) and 9(b)(iii). Finally, the Court is concerned that only ten percent of the 400 families displaced from the territory have returned to their homes and that the rest remain in a situation of displacement (*supra* Having Seen 7(c)(i) and 8(c)(iv).

12. In virtue of the above considerations, and in order to evaluate the State's petition in more detail, this Court finds it appropriate to reiterate to the State that it must continue to enforce and inform on the provisional measures for protections being implemented tending to protect the life, personal integrity, personal liberty and right to freedom of movement of the beneficiaries, as well as the effects produced by such measures, including, especially,

the effective investigation of the events which prompted the adoption of the present provisional measures. To this effect, the State shall submit two reports, one on April 2, 2007, and the other on July 1, 2007. Accordingly, the Inter-American Commission and the beneficiaries or their representatives will have a period of six and four weeks, respectively, measured from the date of receipt of said State reports, to present the observations they deem pertinent. On the basis of such reports and observations, the Court will evaluate the appropriateness of lifting or extending the provisional measures, in accordance with the criteria established in Article 63(2) of the Convention.

13. The Court has previously ordered the protection of a group of individuals that have not been identified by name, although they are in fact identifiable and determinable, and they are indeed in a situation of grave danger due to their membership as part of a community.⁶ In the present case, the Court has found that the Kankuamo indigenous community is composed of approximately 6,000 members who can be individually identified as living in organized communities, located geographically on the southeastern slopes of the Sierra Nevada de Santa Marta mountains, divided among the departments of Magdalena, Guajira, and Cesar, and whose population centers include Atánquez, Chemesquemena, Guatapurí, Las Flores, Pontón, Mojado, Ramalito, Rancho de la Goya, Los Háticos, La Mina, Murillo and Rioseco. The Court further finds that, because these communities form part of the Kankuamo indigenous community, they are all in a situation of equal risk of being victims of acts of aggression against their lives, personal integrity, personal liberty, as well as the risk of being forcefully displaced from their territory.⁷

14. It is indispensable that these provisional measures be maintained in full force and continue to operate until the Tribunal orders them lifted and notifies the State to this effect.⁸

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in accordance with the authority vested in the Court by Article 63(2) of the American Convention and Articles 25 and 29 of its Rules of Procedure,

RESOLVES:

⁶ Cf., *inter alia*, *Matter of The Communities of Jiguamiandó and Curbaradó*. Provisional Measures, *supra* note 1, Eighth Considering; *Matter of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 2, 2006, Eighth Considering; and *Matter of Children Deprived of Liberty in the "Complejo do Tatuapé" of FEBEM*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 30, 2005, Sixth Considering. Furthermore, cf. *The Mayagna (Sumo) Awajitjngni Community Case*. Judgment of August 31, 2001. Series C No. 79, pars. 148, 149 and 153.

⁷ Cf. *Matter of The Communities of Jiguamiandó and Curbaradó*. Provisional Measures, *supra* note 1, Ninth Considering; *Matter of the Peace Community of San José de Apartadó*. Provisional Measures, *supra* note 6, Eighth Considering; and *Matter of Children Deprived of Liberty in the "Complejo do Tatuapé" of FEBEM*. Provisional Measures, *supra* note 6, Sixth Considering.

⁸ Cf. *Matter of Giraldo-Cardona*. Provisional Measures, *supra* note 2, Twenty-first Considering; *Case of Gómez-Paquiyaury*. Provisional Measures. Order of the Inter-American Court of Human Rights of September 22, 2006, Nineteenth Considering; and *Matter of Marta Colomina and Lilliana Velásquez*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, Fourth Considering.

1. To require the State to 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.
2. To reiterate to the State that it must continue to investigate and inform the Inter-American Court of Human Rights about the facts that gave rise to the present provisional measures with the aim to identify those responsible and, where appropriate, to punish them.
3. To reiterate to the State that it must 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.
4. To reiterate to the State that it must 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 the measures ordered by the Inter-American Court of Human Rights.
5. To require the State to present to the Inter-American Court of Human Rights two reports, one on April 2, 2007, and the other on July 1, 2007, regarding the provisional measures that have been adopted with regard to this Order, and to require the Inter-American Commission of Human Rights and the beneficiaries of these provisional measures or their representatives to submit their observations on the State's reports within six and four weeks, respectively, measured from the time of receipt of the reports.
6. To request the Secretariat to notify the present Order to the State, the Inter-American Commission of Human Rights, and the beneficiaries of the provisional measures and their representatives.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alesandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary