

**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 measures adopted, in accordance with the Order of March 6, 2003.

* 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.

3. The public hearing held on February 5, 2008, where the State, the Inter-American Commission and the representative of the beneficiaries were present¹.

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 of the Rules provide that:

[...]

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

[...]

6. The 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. 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 No. 1 and 2), the State shall, *inter alia*, a) 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; b) adopt any measures necessary to guarantee that the individual beneficiaries of these measures may

¹ The following individuals attended the public hearing: a) for the Inter-American Commission: Víctor Abramovich and Santiago Canton, delegates, 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 Jiguamiandó river basin (*Consejo de la Cuenca del Río Jiguamiandó*); 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.

continue living in their current locations, free from any threat or coercion whatsoever and, c) establish a permanent supervision and communication mechanism in the so-called “humanitarian refugee zones”.

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5. As regards the measures adopted to protect the life and personal integrity of the members of the Community Council of Jiguamiandó and Curbaradó families, and the measures to guarantee that the individual beneficiaries of these measures may continue living in their current locations, free from any threat or coercion whatsoever (*Operating Paragraphs No. 1 and 3 of the Order of March 6, 2003*), the State indicated, during the public hearing (*supra* Having Seen clause No. 3), that police forces are present at the urban areas of Murindó, Carmen del Darién and Belén de Bajirá, and that nearly three months ago Squad XV was organized for the protection and security of the area, in addition to the VII Army Division, headquartered in Medellín, which has more direct power on the squads active in the area. The State remarked that these measures are necessary given the nature of the threats of illegal armed groups in the area and stated that it took immediate action after the violent events occurred in the beneficiary communities. Furthermore, the State indicated that a security scheme has been designed for the benefit of Enrique Petro, beneficiary of these measures. At such hearing, the State also reported on the work carried out with the Mission to reinforce the peace measures adopted by the Organization of American States, to identify and control the groups that tried to “rearm themselves” in the area. In that respect, the State indicated that progress has been made to identify and develop some investigation lines to “strengthen results against these groups” and that it collaborated with local authorities to guarantee non-coerced work and security conditions to the residents of the area.

6. At the public hearing (*supra* Having Seen clause No. 3), the State referred to the work carried out by state authorities regarding collective areas and their alleged usurpation by “palm farmers”. In this regard, the State reported that, to date, 23 individuals have connections with oil palm companies against which criminal proceedings have been initiated and that the last administrative stage to establish title to jointly-owned areas “would end, pursuant to legal provisions, on Friday, February 8, 2008”.

7. The representative stated that from March 14, 2005, to February 5, 2008, 77 death threats, 4 murder attempts, 1 forced disappearance, 4 forced exiles, 1 extra-legal execution, 17 acts of intimidation, 8 statements and 8 arrests took place; the memorial built by the relatives of the victims was destroyed; 7 acts of abuse of authority, 4 indiscriminate air machine/gun attacks occurred and guerrillas made 4 attempts to forcefully enter humanitarian areas, which resulted in 2 executions. Moreover, the representative stated that “Public Forces have not played a neutral role and local authorities have acted fraudulently so that oil palm is grown in jointly-owned territories; uniformed and camouflaged police authorities were

seen with paramilitary structures and they have initiated administrative procedures against afro descendants and mixed-race individuals who tried to return to their original territories". The representative admitted that national officers have acted diligently to address emergency situations; that notwithstanding, the representative stated that such diligence did not translate into protection of the life of the beneficiaries of these provisional measures or their territory. In that regard, the representative stated that the procedures carried out by the State were reactive, rather than preventive, in nature.

8. At the public hearing, the representative also claimed the fostering of "re-population" procedures involving individuals who allege to be traditional inhabitants of the jointly-owned territory, but had never lived there before; the stockbreeding area was extended to jointly-owned territories in 3 instances and palm growing extended in 13 locations; after exercising their joint ownership right, the beneficiaries of these provisional measures were allegedly threatened by oil palm entrepreneurs in 8 instances; the signs indicating "humanitarian zones" and "biodiversity zones" were damaged by pillage; 3 illegal de-forestation areas were expanded and palm fruits were continuously extracted in the presence of public forces during the last six months, crops from farmers who returned to the region were damaged, and water sources were destroyed and impaired without any response from state authorities.

9. The representative admitted that after "almost 11 years of forced displacement and 7 years of usurpation by palm industry entrepreneurs of the lands jointly owned by afro descendants", it was ordered that formal investigation proceedings be brought against 23 entrepreneurs and land commissioners for the "crime of concord to commit an unlawful act, forced displacement, land usurpation, false statements and crimes against the environment". However, the representative informed that there is still no "decision on the merits of this investigation" or "specific results against the paramilitary structures that participated in palm growing areas". The representative sustained that there was no active or permanent identification of the local, regional and national public officers who allegedly took part, through acts or omissions, in such events. Moreover, the representative expressly mentioned proceeding No. 979348, whereby the Prosecutor ordered "all these entities to adopt any measures necessary to suspend the effects of oil palm crop growing," which directly affect the life and integrity of the residents of "humanitarian zones" and "biodiversity zones", and to that date, no diligent or effective measures were implemented by the entities ordered to do so. Lastly, the representative informed that the proceedings for delimitation and demarcation of jointly-owned territories advanced by INCODER came to an end and that the jointly-owned areas, which are now home to stockbreeding ranches, oil palm crops and "re-settlers", constitute the jointly-owned territory of the High Community Councils of Jiguamiandó and Curbaradó and that, nevertheless, this acknowledgment of rights and legal certainty did not materialize in restoration of the lands.

10. The Commission considered important for the State to provide detailed and accurate information on the criminal investigation initiated by the General Prosecutor's Office, whereby 23 entrepreneurs connected with oil palm exploitation

were summonsed to render a preliminary examination statement since such investigation is of the essence, not only to establish the unlawful appropriation of land but also to identify risk factors regarding life and physical integrity in the region; and also on progress made as to the determination and demarcation of jointly-owned territory. The Commission highlighted that the information provided by the State reflects delays in the effective physical restoration of illegally appropriated territories; therefore, it would be important to obtain information regarding specific progress made as to administrative procedures for material restoration of lands.

11. The Court appreciates the efforts made by the State to provide protection to the beneficiaries of these provisional measures and the reaction to various violent events against the beneficiaries of the measures. That notwithstanding, the Court finds that violent and aggressive acts against the beneficiaries have not ended and that, in this regard, it is necessary to adopt effective preventive measures to avoid new events such as those referred to by the representative. In this regard, it is necessary to remind the State of its obligation to guarantee, in accordance with the American Convention, that the individuals beneficiaries of these measures may continue living in the locations where they now reside, free from any threat or coercion whatsoever.

12. Regarding the various criminal and administrative procedures in progress for the determination of title to jointly-owned territories and alleged acts of invasion and illegal exploitation thereof, the Court notes that the representative complained that there were presumably internal orders in their favor which, nevertheless, were not complied with. In this regard, the Court reminds the State that, pursuant to Articles 8 and 25 of the American Convention, States have a duty to comply with any jurisdictional decisions made by internal bodies.

13. The Court reminds the State of its obligation to diligently investigate, prosecute and punish, if applicable, those responsible for the aggressions mentioned by the representative, as effective protection measure against acts of such nature.

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14. As regards the establishing of an ongoing supervision and communication mechanism with the so-called "humanitarian refugee zones" (Operating Paragraph No. 6 of the Order of March 6, 2003), the State mentioned the strengthening of intercommunication with the beneficiaries through Squads XV and XVII of Urabá Police Department and by the National Police Board and the Ministry of the Interior and Justice, who also receive training on the implementation of provisional measures. The State informed that the beneficiaries were provided with various communication means, including, among others, 5 satellite phones and 7 cell phones. Moreover, at the public hearing (*supra* Having Seen clause No. 3), the

State suggested direct intercommunication with local authorities. In that regard, the State indicated that “there are 2 options that the State considers might be useful to supervise this procedure: firstly, the possibility to request the Ombudsman and the General Prosecutor’s Office to perform a quarterly evaluation of the situation in both basins, which would allow to supervise the work made by the State regarding the obligations comprised in those measures; and, secondly, the scheduling of field visits, which could be made by State officers with the participation of the beneficiaries for the purposes of evaluating the situation. These visits may also be made on a quarterly basis, notwithstanding any potential extraordinary visit, if so required”.

15. The representative stated that for the purposes of ongoing supervision of the adopted protection measures, the national government should make an effective commitment as regards local authorities and their involvement in the territory. The representative remarked that, given the population and topographic characteristics of the area, it was suggested that the national government allocate other instruments to develop early alert mechanisms with greater mobility for reporting in areas where satellite phones did not work, since none of them is active to this date.

16. As regards the definition of mechanisms for provisional measure follow-up and to guarantee their efficacy, the Inter-American Commission considered “important the proposal for drafting a quarterly report on the Ombudsman and General Prosecutor’s Office, and also defining a field visit schedule with the participation of the beneficiaries, since there is no doubt that the presence of national authorities in the lands is of the essence to achieve adequate evaluation and follow-up of the situation”.

17. Within the scope of the State’s obligation to define an ongoing supervision and communication mechanism with the beneficiaries of these provisional measures, the Court appreciates the proposals of the State regarding the performance of quarterly evaluations of situations posing risks to the life and personal integrity of the beneficiaries of Jiguamiandó and Curbaradó river basins, possibly under the charge of the Ombudsman and the General Prosecutor’s Office, aimed at supervising the work carried out by the State regarding these provisional measures. Similarly, possible *in situ* visits by State officers were deemed convenient in order to assess the situation, counting on the active participation of the beneficiaries. The proposed supervision mechanisms would be aimed at contributing to the efficacy of the protection measures adopted on this matter. In this sense, the Court urges the State to activate any such mechanisms. Furthermore, it is important that, as mentioned by the State and the representative, national authorities reach an agreement with the various municipal authorities as to measures to effectively guarantee security and to protect the life and personal integrity of the beneficiaries of the provisional measures.

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18. The representative requested specific protection measures for Ligia María Chaverra and Manuel Dennis Blandón, given that they were informed of a rise in the risk to the life and integrity of these individuals.

19. The State indicated that this is the first information received in this regard and that the State would be “willing to continue maintaining and even strengthening the measures, as required”.

20. The Inter-American Commission informed that it had become aware before the public hearing (*supra* Having Seen clause No. 3) of “the threats and possible intimidation against two Community leaders”, and stated that it would await the information to be provided by the representatives to “supplement the request for specific protection measures, as the case may be”.

21. In view of the request made by the representative and the representations made by the State, and considering the specific circumstances of the case, it is necessary for the State to immediately adopt special protection measures to the benefit of Ligia María Chaverra and Manuel Dennis Blandón. Such measures must be agreed-upon in consultation with their beneficiaries or their representative. In the next report, the State must disclose to the Court any measures agreed-upon, as the case may be.

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 restate the request to the State of Colombia to adopt, without delay, any measures necessary to protect the life and personal integrity of all members of the Community Councils of Jiguamiandó and Curbaradó families who are beneficiaries of these measures, pursuant to Whereas clause 11 of this Order.

2. To adopt any measures necessary to protect the life and integrity of Ligia María Chaverra and Manuel Dennis Blandón, allowing full participation by them and their representative in the definition of those measures, pursuant to Whereas clause No. 21 of this Order.

3. To restate the request to the State of Colombia to adopt any measures necessary to guarantee that the individual beneficiaries of these measures may continue living in their current location, free from any threat or coercion whatsoever, in accordance with Whereas clause No. 11 of this Order.

4. To restate the request to the State of Colombia to establish an ongoing

supervision and communication mechanism at the so-called “humanitarian refugee zones”, in accordance with clause No. 17 of this Order.

5. To restate the request to 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.

6. To call upon the State of Colombia to continue reporting to the Inter-American Court of Human Rights, every three months, on the provisional measures adopted and to request the representatives of the beneficiaries of the provisional measures and the Inter-American Commission on Human Rights to submit their observations on the State reports within a term of four and six weeks, respectively, following notice of the corresponding State reports.

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