

**Order of the
Inter-American Court of Human Rights*
of November 17, 2009
Provisional Measures regarding 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”) of March 6, 2003, in which it resolved to:

1. Request the State of Colombia to adopt, without delay, the measures necessary to protect the life and personal integrity of all the members of the communities constituted by the Community Council of Jiguamiandó and the families of Curbaradó.

2. Request the State of Colombia to investigate the facts that motivated the adoption of such provisional measures, with the purpose of identifying those responsible and imposing upon them the corresponding sanctions.

3. Request the State of Colombia to adopt as many measures as might be necessary to assure that the beneficiaries of the present measures can keep living in the places they inhabit, without any kind of coercion or threat.

4. Request the State of Colombia, according to that established in the Inter-American Court of Human Rights, to grant special protection to the so-called “humanitarian refuge zones” constituted by the Community Council of Jiguamiandó and the families of Curbaradó, and consequently, to adopt the necessary measures for them to receive all the aid of a humanitarian character that is sent to them.

5. Request the State of Colombia to guarantee all the security conditions necessary for the people of the communities constituted by the Community Council of Jiguamiandó and the families of Curbaradó that have been forced to move to wild zones or other regions, to return home, or to the “humanitarian refuge zones” established by such communities.

6. Request the State of Colombia to establish a mechanism of continuous supervision and permanent communication in the so-called “humanitarian refuge zones”, according to the terms of the present Order.

7. Request the State of Colombia to give participation to the representatives designated by the beneficiaries of these measures, in their planning and implementation and, in general, to keep them informed regarding the advance of the measures dictated by the Inter-American Court on Human Rights.

[...]

2. The Orders of the Inter-American Court of November 17, 2004, March 15, 2005, February 7, 2006, and February 5, 2008, in which it ordered, *inter alia*, to request the Republic of Colombia (hereinafter “the State” or “Colombia”) to maintain the measures adopted, according to the Order of March 6, 2003.

* Due to reasons of *force majeure*, Judge Cecilia Medina Quiroga and Judge Leonardo A. Franco did not participate in the deliberation and signing of the present Order.

3. The briefs of December 20, 2006 and January 18, 2008, in which 32 families of the communities of Pueblo Nuevo and Puerto Lleras, of the Jiguamiandó River basin requested their “self-representation” in the processing of this matter to enforce their “condition as beneficiaries of the provisional measures,” appointing as their representatives Mr. Graciano Blandón Borja and Mr. Lubin Córdoba Córdoba, respectively.
4. The briefs of October 1, 2007, and July 16, 2008, in which 177 families belonging to the community of Bocas de Curvadó requested their “self-representation” in the processing of this matter to enforce their “condition as beneficiaries of the provisional measures,” appointing as their representatives Mr. Manuel Moya Lara and Mr. Adelfio Ramos Córdoba.
5. The briefs of February 15, 2007, and December 19, 2007, in which the Inter-Ecclesiastical Commission of Justice and Peace (hereinafter “the representatives”) submitted its observations regarding the request of “self-representation” of the 32 families of the communities of Pueblo Nuevo and Puerto Lleras of the Jiguamiandó River basin and of the 177 families that belong to the community of Bocas de Corvadó.
6. The private hearing carried out on February 5, 2008, hosted at the headquarters of the Court, with the participation of the 32 families of the communities of Pueblo Nuevo and Puerto Lleras of the Jiguamiandó River basin and of the 177 families belonging to the community of Bocas de Corvadó, with the purpose of hearing the request of these families.
7. The Resolution of the Inter-American Court of Human Rights, in which it required the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) to submit its position on the range of beneficiaries of the provisional measures granted in this matter.
8. The brief of the September 11, 2008, in which the members of the “Return Management Committee” of the black Puerto Lleras and Pueblo Nuevo communities of the of the Jiguamiandó River basin requested their “self-representation” in this matter.
9. The brief of September 17, 2008, in which Mr. Manuel Moya Lara and Mr. Graciano Blandón Borja, representatives of the 32 families of the communities of Pueblo Nuevo and Puerto Lleras of the Jiguamiandó River basin and of the 177 families (today, 199)¹ that belong to the community of Bocas de Curvaradó (hereinafter, “representatives of the 231 families”) reiterated the request for the recognition of their condition as beneficiaries regarding the present provisional measures (*supra* Having seen 3 and 4.)
10. The communication of February 23, 2009, in which the Inter-American Commission submitted a report on the work visit to Colombia, performed by a delegation of the organization regarding this matter, in attention to the Order issued by the Court on February 5, 2005 (*supra* Having seen 7.)
11. The brief of April 17, 2009, in which the representatives submitted their observations to the report of the Inter-American Commission on the visit performed in Colombia.
12. The brief of April 27, 2009, in which the representatives of the 231 submitted their observations to the report of the Inter-American Commission.

¹ In a brief submitted on October 1, 2007, 177 families addressed this Tribunal. Later, in a brief received on July 16, 2008, 22 more families joined this request, adding to a total of 199 families.

13. The brief of June 12, 2009, in which the State submitted its observations to the report of the Inter-American Commission.

CONSIDERING:

1. That Colombia is a State Party to the American Convention on Human Rights, (hereinafter the “American Convention”) since July 31, 1973, and acknowledged the adjudicatory jurisdiction of the Court on June 21, 1985.

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

3. That Article 26(2) of the Rules of Procedure of the Court² (hereinafter “the Rules of Procedure”) reiterates that: “[w]ith respect to matters not yet submitted to it, the Court may act at the request of the Commission.”

4. That the disposition established in Article 63(2) of the Convention grants an obligatory character to the adoption, by the State, of the provisional measures ordered by this Tribunal, given that the basic principle of the Law of State Responsibility, supported by international jurisprudence, has pointed out that the States shall fulfill their conventional obligations in good faith (*pacta sunt servanda*).³

5. That in International Law of Human Rights, provisional measures have not only a cautionary character in the sense of preserving a legal situation, but are also fundamental to give protection to human rights, to the extent that they seek to avoid irreparable damages to persons. The measures are applied as long as the basic requirements of extreme gravity and urgency and of the prevention of irreparable damages to persons are met. In this way, provisional measures transform into a true jurisdictional guarantee of a preventative character.⁴

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² Rules approved by the Court in its XLIX Ordinary Period of Sessions, held between November 16 - 25, 2000, and partially reformed during the LXXXII Ordinary Period of Sessions, held January 19-31, 2009.

³ Cf. *Matter of James and others. Provisional Measures regarding Trinidad and Tobago*. Order of the Inter-American Court of Human Rights of June 14, 1998, Considering sixth; *Matter of A.J. and others, Provisional Measures regarding Haiti*, Order of the Inter-American Court of Human Rights of September 21, 2009, Considering sixth, and *Matter of Guerrero Lárez. Provisional Measures regarding Venezuela*. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering fifth.

⁴ Cf. *Case of “La Nación” Newspaper.” Provisional Measures regarding Costa Rica*. Order of the Inter-American Court of Human Rights of September 7, 2001. Considering fourth; *Matter of A.J. and others, Provisional Measures regarding Haiti*, *supra* note 3, Considering fifth, and *Matter of Guerrero Lárez. Provisional Measures regarding Venezuela*, *supra* note 3, Considering fourth.

6. That by ordering provisional measures, this Court has considered indispensable, as a general rule, the individualization of the persons that are in danger of suffering irreparable damages in order to grant them protection measures. However, in several opportunities, it has ordered the protection of a plurality of persons that have not been previously named, but that are identifiable and determinable and that are in a situation of grave danger due to their membership to a group or community.⁵ By adopting provisional measures in this sense, the Tribunal does it under objective criteria that will permit the individualization of the beneficiaries at the moment of executing the measures. These criteria amount to, in one side, membership links, and on the other side, to a situation of grave danger common to the members of the group, due to such membership.

7. That while adopting the present provisional measures by request of the Inter-American Commission, the Court determined that these shall protect a plurality of persons that, although they have not been previously named, they can be identified and individualized, as members of the communities constituted by the Community Council of Jiguamiandó and the families of Curbaradó. According to the information provided by the Commission, at that moment, the beneficiary communities were “integrated by approximately 2,125 persons that constitute 515 families,” established in the “humanitarian refuge zones.”

8. That in the briefs of December 20, 2006, October 1, 2007, January 18 and July 16, 2008 (*supra* Having Seen 3 and 4), 32 families of the communities of Pueblo Nuevo and Puerto Lleras, of the Jiguamiandó River basin and 199 families that belong to the community of Bocas de Curvaradó, all of them in a situation of forced displacement in the urban area of Curvaradó, Municipality of Carmen del Darién, Department of Chocó, requested before the Tribunal the enforcement of their condition as beneficiaries of the present Provisional Measures in order to get the same guarantees that were granted to other displaced persons represented by the Inter-Ecclesiastical Commission of Justice and Peace. Likewise, they claimed direct dialogue with the State to arrange the measures to their benefit.

9. That the Inter-Ecclesiastical Commission of Justice and Peace pointed out in its observations (*supra* Having Seen 5) that the concrete scope of application of the present provisional measures is “the perfectly identifia[ble] persons that, due to the internal armed conflict, live in a community that has been denominated “Humanitarian Zones” and also “Biodiversity Zones.” The first of them, “inhabited by persons of the Community Councils [...] that are associated as a civilian population in order to inhabit the Territory [...] loca[ted] in places that are not militarily strategic [...] with the purpose of protecting civilians, Afro-descendents and of mixed race of the combatant groups [...] whom freely assume a life project [and,] an ethical code according to [L]aw 70”. On the other side, the Biodiversity ones “are a proposal of preservation and recuperation of the environment [..., that] constitute also a mechanism to ensure the equitable and sustainable access to the resources and socialization of the same as a good of humanity.” In this sense, it pointed out that the beneficiaries of the present measures “have historically been the 161 Afro-

⁵ Cf. *Matter of the Peace Community of San José de Apartadó. Provisional Measures regarding Colombia*. Order of the Inter-American Court of Human Rights of November 24, 2000, Considering seven; *Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center. Provisional Measures regarding the Bolivarian Republic of Venezuela*. Order of the Inter-American Court of Human Rights of February 8, 2008, Considering twenty one, and *Matter of the Peace Community of San José de Apartadó. Provisional Measures regarding Colombia*. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering seven.

Colombian and families of mixed race [...] that inhabit in the Humanitarian Zones and in the Biodiversity Zones of Curvaradó y Jiguamiandó.”⁶ This population asserts “the right to a decent life, of the return to their land, to property restitution, and to the environmental protection before the illegal business development in their territory,” and regarding which they have assumed representation, acting both in the Inter-American System as well as in internal actions.

10. That in attention to the diverse positions manifested during the private hearing carried out at the headquarters of the Court regarding the aforementioned request (*supra* Having Seen 6), the Court estimated, in the Order of February 5, 2008, that “the number of persons that in this moment make up the beneficiary communities is not susceptible of determination nor exact identification.” For this reason, the Court considered that it “[was] for the Inter-American Commission to clarify to the Tribunal the range of persons who qualify as beneficiaries of these provisional measures that were adopted upon its request. For this purpose, the Commission shall point out the precise criteria that [could] permit the determination and identification of the beneficiaries of these measures in a collective sense,” (*supra* Having Seen 7).

11. That after the Order issued by the Tribunal, members of the “Return Management Committee” of the black communities of Puerto Lleras and Pueblo Nuevo of the Jiguamiandó River basin, representing 450 families, requested them “to be taken into account in the **RANGE OF QUALIFYING PERSONS** that form the 515 families [...] beneficiaries of the provisional measures” ordered in this matter (emphasized as in the original.)

12. That in response to the requirement carried out by the Court, after four time extensions were granted and after the non-extendable term that was established for such purpose was due, the Inter-American Commission informed the Tribunal that it had performed a visit to the zone in which the beneficiaries of the present provisional measures and the 231 families inhabit. (*supra* Having Seen 10). The Tribunal observes that in such brief, the Commission did not establish its position regarding the range of persons that at this moment make up the beneficiary communities. It was limited to establish in a general way four criteria that shall allow this Tribunal to determine such range, as follows: a) “the membership to the human group that forms the so-called “Minor Community Councils” of the basin of the Jiguamandó and Curvaradó rivers, recognized by the [...] Colombian State locally and municipally;” b) “the permanence in the community territory located between the basin of the Jiguamandó and Curvaradó rivers after March 6, 2003, the date in which the Tribunal ordered the adoption of these provisional measures;” c) “the participation or the lack thereof, in the judiciary complaints filed with the purpose of retrieving the possession of the lands usurped by the palm business persons,” and d) “the use that the person gives to the portion of territory that has been assigned to him or her.” Furthermore, the Commission pointed out that the discussion about the range of beneficiaries “revolves around fundamental differences of criteria, as follows: a) the entitlement to the realm right over the community territory, and b) the legitimacy of the election of the Directors of the Curvaradó Community Council.” Regarding the first aspect, the Commission indicated that “the collective entitlement of the territory belonging to this human group was legalized by [...] the Law 70 of 1993, [that] gives a generic legal framework for the protection of the property rights and cultural identity of the black communities of the Pacific basin, including the communities of Jiguamiandó and Curvaradó. In its Article 7, this norm establishes that,

⁶ Specifically, they pointed out that they have assumed the representation with the endorsement of the Community Councils of the families that inhabit in the four Humanitarian Zones, namely Nueva Esperanza, formed by 33 families and Pueblo Nuevo, formed by 60 families in the Jiguamiandó river basin, which was formed by its inhabitants from 2001 until October 2006, in what was denominated Bella Flor Remacho Humanitarian Zone, that existed from 2001 until October 2006. Also, the five Biodiversity Zones in Curvaradó are formed by 8 families.

once they have been adjudicated as a community, the collective-use lands shall be considered as “inalienable, non-extinguishable, and non-attachable.” Regarding the election of the Directors of the Curvaradó Community Council, the Commission stated that the representatives of the 231 families settled in the urban area of Carmen del Darién, appealed it before the local authorities, and afterwards, the Direction of Ethics of the Ministry of the Interior decided such appeal through an administrative resolution.

13. That the representatives of the 231 families referred to the each one of the four criteria suggested by the Commission (*supra* Having Seen 12), as follows:

- a) regarding the first criterion, they indicated that the “32 families belong to the MINOR COUNCILS OF PUERTO LLERAS AND PUEBLO NUEVO, which are part of the MAJOR COUNCIL OF THE CURBARADO BASIN.” Furthermore, they emphasized their condition of “BLACK DESCENT” and their ancestry in such territories;
- b) regarding the second criterion, they observed that the permanence in such territory has been “a privilege of some”, given that after the “HUMANITARIAN CRISIS generated by the displacement, the land possession has been a major problem that has impeded the free development of the BLACK COMMUNITIES [, whom] for approximately 6 years [live] in the banks of Atrato River, in the urban area of the Municipality of Carmen del Darién where they are located the basin of the Curbaradó and Jiguamiandó, therefore[,] in the zone of influence of the structural problem [...], in the place where the Curbaradó river flows into, meaning, a strategic spot of mobility[.] Ther[e] is where the largest amount of Afro-descendents that own [the] collective territory live, not because they so w[ant], but because [they] are subject to, obligated to, and frightened, in this sector of influence of the armed conflict;”
- c) regarding the third criterion, they indicated that the families that they represent have also filed judicial procedures, despite their “scarce economical and human resources [...], proof of which is the criminal investigation generated by the accusation of over 60 persons, filed before the HUMAN RIGHTS NATIONAL UNIT under file No. 2022 against members of the 57 Front of the [Revolutionary Colombian Armed Forces] FARC, or several actions, petitions, and briefs that they have constantly filed before different entities of the [C]olombian [S]tate and international organizations, in order for them not to be excluded from the procedures,” and
- d) regarding the fourth criterion, they held that they had plots of land within the collective territories before the displacement. Hence, for them, it “is imperative to recover their plots and produce on them[, since] they h[ave] not been able to return to [their] plots and exercise the governability over their collective territories, due to the fear of the FARC.” They pointed out that it was concerning “the situation of the 231 families without any kind of labor options, while their plots were almost abandoned.” Furthermore, they considered that “it is not possible that, under a defined scenario by a ring of HUMANITARIAN and BIODIVERSITY ZONES, the HH.RR. [human rights] of the BLACK COMMUNITIES OF CURBARADÓ Y JIGUAMIANDÓ are being restricted from obtaining the benefit from the territories given and adapted with sufficient infrastructure to generate crops.”

14. That the Inter-Ecclesiastical Commission of Justice and Peace, in its observations (*supra* Having Seen 11) did not refer specifically to each one of the criteria that were pointed out by the Inter-American Commission. However, it manifested that it shared the observations made. Furthermore, it stated that “[t]he lack of definition of the beneficiaries of the measures has become an additional factor of vulnerability.” Likewise, it pointed out that “[t]he visit [...] of the Inter-American Commission to the Humanitarian Zone and the Biodiversity Zone of ‘Nueva Esperanza’ for the elaboration of its report, allowed the

identification of [...] the risk factors suffered by the persons that they represent [...] since 2001, [...] all of them members of the Community Councils of Curvaradó y Jiguamiandó,” whom, according to their judgment, “are the beneficiaries of the Provisional Measures.” Finally, it requested the Court to “take any measures to allow the full and effective enforcement of the protection measures of which the inhabitants of the Humanitarian and Biodiversity Zones are the beneficiaries that [they] represent.”

15. That the State referred to the four criteria suggested by the Inter-American Commission for the determination and identification of the beneficiaries of the provisional measures (*supra* Having Seen 13). In that sense, as a general observation, it considered that the Commission did not “precise with sufficient criteria” to permit the determination and identification of the beneficiaries of the measures in a collective sense. Additionally, it indicated, *inter alia*:

a) regarding the first criterion, that the Commission had lacked precision in the terms, because the Law 70 of 1993 does not assign denominations such as “Minor Community Councils” or “Major Community Councils” and that, in any event, what existed, by its own denomination of the communities of the Jiguamiandó River and Curbaradó River, was the “Major Community Councils.” Furthermore, the State denied the existence of official statistics related to the Community Councils, since precisely “one of the problems faced in the conformation of [such] is the displacement of the inhabitants of the zone and the errors on the censuses.” Likewise, it pointed out that in November 2000, “the Community of Curvaradó was formed by 642 families (2415 persons) and [...] the Community of Jiguamiandó [by] 483 families (2368 persons).” Regarding that particular matter, the State informed that it currently is planning a census process within the Communities, and gave information about the procedures for its development within the communities of Jiguamiandó and Curvaradó. Finally, it pointed out that “[t]his commitment is developed in a extremely delicate context; in part due to a conflict within the community, particularly evident in the discrepancies of the criteria of appointment and membership to the community councils; but also because the community links have been disabled, exposing the persons in both councils to a regrettable uprooting;”

b) regarding the second criterion, which was not concordant with that established by the Court in its Order of March 6, 2003, since in this Order it had also considered the displaced persons as beneficiaries of the present provisional measures. Finally, the State emphasized the difficulties that it would have to adopt this suggested criterion, such as: identify with certainty the people that have remained in the territory since the date of the aforementioned Order; the determination of which authority would be the one charged with establishing such permanence, and the differences within the Community that could arise while applying such criterion, as this could deepen their division;

c) regarding the third criterion, that it shall not have further relevance, due to the fact that “it is only the two legal representatives of the Community Councils who could attend the judicial hearing.” It added that if the Inter-American Commission “refers to another type of participation, the State of Colombia wants to point out that the criterion, interpreted in this manner, constitutes a strictly excluding and discriminatory parameter, since the reasons not to have participated in the judicial complaints may refer to different circumstances, one of them—for example— could have [been] the lack of knowledge of the initiation of judicial procedures for the recuperation of their territory, a situation that could have taken place with the population that is in a situation of displacement,” and

d) regarding the fourth criterion, that this constituted “a strictly provisional parameter, given that the use set for the land by the community nowadays might possibly not be the same use set in the future; therefore, the State is concerned because the establishment of criteria with such a high degree of variability may generate serious difficulties at the moment of determining the beneficiaries of the provisional measures.” Additionally, the State emphasized that “the burden of the proof in matters of determination and identification of the beneficiaries of the provisional measures is strictly on [...] the [Inter-American] Commission, the organ that requests the [...] Court to adopt the measures in matters not yet submitted to the Tribunal[...], such as the case under study”. Furthermore, the State expressed its willingness “[to] work on the agreement and monitoring of the present provisional measures with the population that the [...] Court determines as their beneficiary; and underline[d] the importance of the strengthening of the organizations [...] of the Afro-Colombian population as well as of the Community Councils.”

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16. That the Court appreciates the efforts carried out by the Inter-American Commission regarding the group of criteria submitted for the determination of the beneficiaries of the present measures. The Tribunal is aware of the difficulties that such task has implied and the significance that it has for the effective implementation of this measures. However, the Court considers that, since it was the Commission who requested the adoption of the present provisional measures, it shall not limit the establishment of general criteria according to which the Tribunal shall decide who the beneficiaries of the present preliminary measures are. The Commission, besides having submitted objective criteria for the determination of the protected persons, shall inform clearly to the Tribunal its position as to which is the range of people that make up the beneficiary communities, namely, whether they were formed by the 161 families represented by the Inter-Ecclesiastical Commission of Justice and Peace, as well as the 231 claiming families, and the 450 families that make up the “Return Management Committee”, or if only one of this groups shall be considered as the beneficiary.

17. That despite that stated above, given the time that has passed since the request of the 231 families, and due to the fact that this type of request is continually submitted before this Tribunal by other groups of families, (*supra* Having Seen 8), the Court shall analyze the criteria presented by the Inter-American Commission in order to establish whether they are adequate to clarify which is the range of beneficiaries of the measures and, in this line, to evaluate the referred requests.

18. That regarding the first criteria provided by the Inter-American Commission, regarding the membership to the human group that forms the so-called “Minor Community Councils” of the basin of the Jiguamandó and Curvaradó rivers, recognized by the [...] Colombian State locally and municipally, this Tribunal notes that the Law 70 of 1993, “[t]hrough which temporary Article 55 of the Political Constitution,”⁷ does not establish a specific name designation for the organizational institutions established by the communities of the zone. Such law establishes that, in order to consider the communities as beneficiaries of the law, they shall establish Community Councils as a form of internal organization,

⁷ Crf. Law 70 of 1993, published in the Official Gazette No. 41.013 of August 31, 1993, which explained the provisional Article 55 of the Political Constitution. Available at: http://www.secretariassenado.gov.co/senado/basedoc/ley/1993/ley_0070_1993.html.

whose requirements shall be established by the State.⁸ In this manner, the referred organizational forms are formed as an expression of the autonomy of the communities settled in such zones, so the distinction between Community Councils, as well as Major or Minor Councils, and consequently, the membership of a plurality of persons to the communities formed by them, is an objective criteria for the determination of the range of beneficiaries of the present provisional measures; therefore, the Court shall analyze it at once. This does not occur with the rest of the criteria submitted by the Inter-American Commission (*supra* Considering 12), that, as it has been expressed by the State, do not provide adequate objective elements that allow us to differentiate the beneficiaries of the present measures in a collective sense, specifically, in the context of the general conditions of the armed conflict in the Colombian State.

19. That according to the information submitted by the Inter-American Commission, the Inter-Ecclesiastical Commission of Justice and Peace, the representatives of the 231 families and the State, there is a substantial number of “Minor Community Councils” on the basin of the Jiguamiandó and Curbaradó rivers. In the present matter, there are two groups differentiated regarding their membership to different “Minor Community Councils.” The first group is formed by the 161 families organized in the “Humanitarian and Biodiversity Zones” that form the “Minor Community Councils” of the Community Councils of Jiguamiandó and Curbaradó, which are beneficiaries of the present provisional measures ordered since March 6, 2003. The second group is formed by 231 families that have joined the request before this Tribunal, of which “32 families belong to the Minor Councils Of Puerto Lleras and Pueblo Nuevo, that are part of the Major Council of the basin of the Jiguamiandó River” and “199 families that form, in its majority, the Minor Council of Bocas Curbaradó, that belongs to the Major Council of the basin of Curbaradó,” (*supra* Considering 9, 13 and 14). There is a majority group formed by 450 families that did not state their membership to any community council of the zone and they only stated “to be part of the black communities of Puerto Lleras and Pueblo Nuevo” that lived in a condition of displacement (*supra* Considering 11).

20. That despite that, the Commission did not inform to the Tribunal which of these groups or “Minor Community Councils” was the beneficiary of the present provisional measures. From the request for the adoption of provisional measures submitted by the Inter-American Commission in 2003, it cannot be inferred regarding from which of the different “Minor Community Councils” was the protection requested. On the contrary, the request refers in a generic manner to those persons that form the “Minor Community Councils”, namely:

The Community Council of Jiguamiandó and the families of Curbaradó, that normally inhabit the margins of those rivers, are formed by a total of 2125 Afro-descendent (515 families), whose collectively titled territory amounts to 54.973 and 25.000 hectares, respectively, in the municipality of Carmen del Darién, Department of Chocó [...] The 2125 members of the Afro-descendent communities in whose favor the adoption this measures is requested are a perfectly-identifiable group that forms the so-called “Minor Community Councils” recognized by the [...] State in the procedure of precautionary measures before the Commission as well as at the local and municipal level, and whose existence is recorded in official records. The State not only has acknowledged the collective property that this community exercises over its land, but also their self-governing mechanisms.

21. That, in the way that they have been stated, the membership criterion submitted by the Commission remains insufficient for the determination of the range of persons that in

⁸ In what is relevant, Article 5 of the Law 70 of 1993 establishes that “[t]o receive as collective property the land subject to adjudication, each community shall form a Community Council as a form of internal administration, whose requirements shall be determined by the Rules issued by the National Government.”

this moment form the beneficiary communities. In particular, the conformation of the Minor Community Councils becomes a complex task due to the problem of internal displacement of the inhabitants of the zone that has affected negatively the possibilities of determination and identification of the beneficiaries of these measures and its effective implementation.

22. That beyond the conformation in determining the “Minor Community Councils”, the membership criteria that allows granting with greater legal certainty, and which has remained since the adoption of the present provisional measures and during its processing, and refers to the organization of the beneficiaries in the “humanitarian refuge zones,” (*supra* Having Seen 1). This has happened in the case of 161 families represented by the Inter-Ecclesiastical Commission of Justice and Peace that inhabit the determined Humanitarian and Biodiversity Zones, and for this reason, they should be considered as beneficiaries of the present measures (*supra* Considering 9 and 14).

23. That without an express request of the Inter-American Commission, this Tribunal cannot extend the protection of the provisional measures ordered in this matter in favor of the 231 families that belong to the Minor Councils of Puerto Lleras and Pueblo Nuevo and to the Minor Council of Bocas de Curbaradó, nor to the 450 displaced families represented by the “Return Management Committee.”

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority conferred by Article 63(2) of the American Convention on Human Rights and Article 26 and 30 of its Rules of Procedure,⁹

DECIDES:

1. To determine that the beneficiaries of the present provisional measures are the members of the 161 families that inhabit the Humanitarian and Biodiversity Zones of Jiguamiandó and Curbaradó, that form a plurality of persons, identifiable and determinable, according to the Considering paragraphs 18 - 23 of the present Order.

2. To request to the Secretary of the Tribunal to notify this Order to the State of Colombia, to the Inter-American Commission on Human Rights, and the representatives of the beneficiaries, Mr. Manuel Moya Lara and Mr. Graciano Blandón Borja, representatives of the 231 families and to the “Return Management Committee,” in representation of the 450 displaced families.

⁹ Rules approved by the Court in its XLIX Ordinary Period of Sessions, held November 16-25, 2000, and partially reformed during the LXXXII Ordinary Period of Sessions, held January 19-31, 2009, in conformity with Articles 71 and 72 of the same.

Diego García-Sayán
President in exercise

Sergio García Ramírez

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Pablo Saavedra Alessandri
Secretary

Diego García-Sayán
President in exercise