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Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Communities of the Jiguamiando and the Curbarado v. Columbia
Doc. Type:	Order (Provisional Measures)
Decided by:	President: Antonio A. Cancado Trindade; Judges: Sergio Garcia-Ramirez; Hernan Salgado-Pesantes; Oliver Jackman; Alirio Abreu-Burelli
Dated:	6 March 2003
Citation:	Community of the Jiguamiando, Order (IACtHR, 6 Mar. 2003)
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HAVING SEEN:

1. The communication of the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) of March 5, 2003, in which it submitted to the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”), in accordance with Article 63(2) de the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), a request for the adoption of provisional measures for the members of the communities of African descent comprising the Community Council of the Jiguamiandó and the families of the Curbaradó (hereinafter “the members of the Communities”), in the municipality of Carmen del Darién, Department of Chocó, in the Republic of Colombia (hereinafter “the State” or “Colombia”), in order to protect their lives and safety and their permanence in the territory to which they had been given collective title, in relation to an application submitted to the Commission by the Inter-Church Justice and Peace Commission (Comisión Intereclesial de Justicia y Paz).

2. The alleged death threats, property destruction, looting, illegal detention, harassment, assassinations and disappearances against the members of the Communities indicated in the Commission's communication (supra first having seen paragraph). Other facts described by the Commission in its request for provisional measures are summarized as follows:

a) The Community Council of the Jiguamiandó and the families of the Curbaradó are composed of a total of 2,125 persons (515 families) of African descent, an their territory, to which they have received collective title covers 54,973 hectares and 25,000 hectares respectively, in the municipality of Carmen del Darién, Department of Chocó. The 2,125 members of the Communities, for whom the adoption of provisional measures is requested, are identifiable groups of individuals who comprise the so-called “Minor Community Councils”, and have been recognized by the State. In addition, the State has recognized these communities’ collective ownership of their land, their self-governing mechanisms, and their identity as a

civilian population distinct from the participants in the internal armed conflict, with regard to which they have assumed a pacific attitude of non-participation;

b) The collective title to the land belonging to this group of individuals was legalized by the State on May 21, 2001, in Act No. 70 of 1993. This Act provides a generic regulatory framework to protect the right to property and the cultural identity of the communities of African descent of the Pacific watershed, including the communities of the Jiguamiandó and the Curbaradó, and establishes that, once awarded to a community, the lands for collective use are "inalienable, imprescriptible and may not be embargoed", and that "the State shall punish and prevent any act of intimidation, segregation, discrimination or racism against the black communities [...] and shall ensure that the principles of equality and respect for ethnic and cultural diversity are enforced";

c) For several years, the members of the Communities have been the victims of acts of harassment and violence designed to cause forced displacement from their territory;

d) In February 1997, as part of a military operation against the Colombian Armed Revolutionary Forces (FARC), the Army's Seventeenth Brigade and armed civilians belonging to the United Self Defense Forces of Colombia (AUC), caused the displacement of inhabitants of the Bajo Atrato region to the jungle, where they hid for a year and a half;

e) Since 2001, the company URAPALMA S.A. has initiated cultivation of the oil palm on approximately 1,500 hectares of the collective land of these communities, with the help of "the perimetric and concentric armed protection of the Army's Seventeenth Brigade and armed civilians in their factories and seed banks." The goal of the armed raids and operations in this territory has been to intimidate the members of the Communities, so that they either join in the production of oil palm or evacuate the territory. The company's preparation of the land in order to expand the crop continues to advance toward the community of Nueva Esperanza, near the place chosen by the members of the Communities to set up their "humanitarian refuge zones." Moreover, under these circumstances, the cultivation of African palm and the exploitation of the natural resources on the Communities' territory endanger the lives and survival of these families;

f) Between January and October 2001, there were more armed raids that resulted in 13 deaths, the looting of provisions held to provide humanitarian assistance, and the displacement of nine communities that inhabited the basin of the Curbaradó River. In consequence, the original villages were abandoned and the Communities reassembled in five sites near the collective territory of the Jiguamiandó. During a visit in loco in December 2001, the Commission received statements from several members of these Communities;

g) In 2002, armed paramilitary activities increased. On September 22, 2002, military units from the Army's Seventeenth Brigade entered the center of the municipality (corregimiento) of Pavarandó. Members of paramilitary groups who, on September 12, 2001, had stoned and stabbed two persons in Puerto Lleras, and cut the throat of another person, as well as assassinating a disabled peasant and a pregnant woman in Pueblo Nuevo, were recognized among them. On the way to Jiguamiandó, these soldiers detained a group of members of the Communities who were going to Mutatá to buy food and threatened to kill them if they returned to their community. Two of those persons have disappeared;

h) In this context, on September 27, 2002, the State promised to adopt urgent measures. However, fifteen days later, there were more paramilitary activities, detentions and threats and, consequently, further displacement of the inhabitants;

i) On October 16, 2002, approximately 160 men, dressed in military uniforms with armbands of the United Self-Defense Forces of Colombia (AUC), entered the Uradá customs

house (resguardo) and threatened the community by saying that “they should either devote themselves to palm tree and coca cultivation or leave their lands”;

j) The armed raids that threaten the refuge zones and the productive areas of the members of these Communities were carried out with the tolerance, acquiescence and participation of State agents attached to the Army’s Seventeenth Brigade. Moreover, armed civilians circulate freely near places where there is a military or police presence on the Atrato River. Individuals displaying insignias that identify them as members of the United Self-Defense Forces of Colombia and of the Army’s Seventeenth Brigade take part in these acts;

k) On November 26, 2002, Cristóbal Romana Paz, a member of the Community Councils of the Jiguamiandó and of the Curbaradó, was detained by armed civilians when returning to the community of Uradá. On December 4, 2002, several members of the Community Council of the Jiguamiandó found his remains in a place known as El Cruce, which leads from Uradá to Pavarandó, near both a military and a paramilitary base. The body of Mr. Romana Paz was dismembered and the head was found about ten meters from the torso;

l) On January 5, 2003, at about 12 m., Jhon Jairo Cuesta Becerra, Carlos Salinas Becerra and his companion, Dora Luz Sánchez, members of the Communities, and their children, Carlos Cristian Sánchez, ten years of age, and Aidé Salinas Sánchez, five years of age, were detained, intimidated and beaten up by “armed [men] dressed in camouflage,” some of whom wore Army insignias. Before they were freed, hours later, they were told: “we need people to work with the palm project. Up there on the border, we need people to work with the project[...] as of today, there are more than 1,800 of us on this land [and] we’re not leaving[...] you have decided to return, you know you are running a risk”;

m) On the same day, while these five people were detained, ten or eleven “armed [men] dressed in camouflage” entered the settlement where the community of Puerto Lleras had taken refuge and fired on those who were there. Some of the armed men wore insignias of the National Army and others wore armbands of the United Self-Defense Forces of Colombia (AUC). They also fired two rifle grenades at a group of people who were in the jungle. Five families who were unable to flee were subjected to insults and threats, in order to make them return home and work. Two days later, most of the inhabitants of Puerto Lleras had returned to their settlement, but during the afternoon, the armed men returned to prevent the community from leaving for the jungle. As a result of this armed raid, most of those who lived in the settlement fled to jungle areas the following day and remained hidden there until January 10, 2003;

n) On January 18, 2003, the inhabitants of Puerto Lleras heard shots close to where they had sought refuge; consequently, more than 100 children, members of the community, assembled in the school. During the afternoon, about 20 armed men, some “camouflaged” and others wearing armbands of the United Self-Defense Forces of Colombia (AUC), entered the settlement in two groups to prevent the inhabitants from seeking refuge in the jungle and to threaten to kill them;

ñ) On February 4, 2003, a group of armed civilians fired on three inhabitants of Puerto Lleras, specifically two minors and one adult, who were on the banks of the Jiguamiandó River at a place known as “Bocas de Jarapetó.” The peasant, Víctor Garcés, received a bullet in his right leg and survived, but his son, Hermid Garcés Almanza, died instantaneously on being shot. The armed men insulted Victor Garcés and accused him of belonging to the guerrilla, after which they put his son’s lifeless body in a boat and obliged Mr. Garcés to sail downriver towards Puerto Lleras. Subsequently, the armed men entered Puerto Lleras and declared that they would not be leaving the region;

- o) On February 16, 2003, at 10 a.m., near the former village of “Remacho”, which has been totally abandoned since 2001 owing to paramilitary activities, an armed civilian threatened to harm a group of people who were navigating the Jiguamiandó River;
- p) On February 27, 2003, the Commission was informed of the disappearance of Aníbal Salinas, which had occurred the previous day and, on March 2, it was advised that the armed men who were threatening the communities had indicated that he was no longer alive;
- q) On February 28, 2003, the Commission was informed that the State had still not complied with the commitment it had made to the communities to cover the costs of medical care for Víctor Garcés Rentería in Medellín, and the authorities of the hospital where he was interned had told him that they would suspend his treatment; and
- r) On March 4, 2003, following adoption of the decision to refer this request for provisional measures to the Inter-American Court, the Commission was advised that there had been another armed raid on the territory of the communities of the Jiguamiandó and the Curbaradó.

3. The precautionary measures ordered by the Inter-American Commission on November 7, 2002, in accordance with the provisions of article 25 of its Regulations, in order to safeguard the lives and safety of the members of the Communities. Furthermore, on February 7, 2003, the Commission requested the State to adopt several specific measures in order to “alleviate the situation of the beneficiaries.” Lastly, on February 25, 2002, the Commission held a hearing at its seat to receive information concerning compliance with the precautionary measures. At that time, it established that the commitments that the State had made to the Communities had not been implemented; that it had not received specific or satisfactory information regarding the progress or the existence of judicial investigations into the acts that had been denounced; and that the petitioners requested the Commission to submit this request for provisional measures to the consideration of the Court.

4. The Commission’s concern, stated in its communication (supra first having seen paragraph), that the State had not adopted adequate preventive measures notwithstanding the attacks by armed groups that harass the community; that despite the military presence in several places, the members of the Communities have not been encouraged to return to their humanitarian zones; and, that the implementation of the agroindustrial oil palm project on the collective territory continues without the consent of the Communities. The Commission also indicates that, owing to the constant paramilitary armed raids, sowing activities for community crops has been paralyzed, and this has exacerbated the food situation in the short and medium term. Lastly, it indicates that the actions taken by the State in response to the precautionary measures ordered by the Commission have not provided effective protection to the beneficiaries, who continue to be subjected to acts of harassment and violence by paramilitary groups that operate freely in a zone where there is a substantial Army presence.

In light of the foregoing, the Inter-American Commission requested the Court “to admit this request for provisional measures in response to the gravity of the situation and the urgency to prevent irreparable damage to the communities of the Jiguamiandó and the Curbaradó,” and asked the Court to order various specific measures.

CONSIDERING:

1. That the State ratified the American Convention on July 31, 1973, and that, in accordance with Article 62 of the Convention, it accepted the contentious jurisdiction of the Court on June 21, 1985.
2. That Article 63(2) of the American Convention establishes that, in cases of “extreme gravity and urgency, and when necessary to avoid irreparable damage to persons,” the Court may, at the request of the Commission, adopt such provisional measures as it deems pertinent in matters not yet submitted to it.
3. That, in the terms of article 25(1) of the Court’s Rules of Procedure:
At 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.
4. That Article 1(1) of the Convention establishes the obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.
5. That, in general, the purpose of provisional measures in domestic legal systems (internal procedural law) is to protect the rights of the parties in dispute, ensuring that the judgment on merits is not prejudiced by their actions *pendente lite*.
6. That, the purpose of urgent and provisional measures in international human rights law goes further, because, in addition to their essentially preventive nature, they protect fundamental rights, inasmuch as they seek to avoid irreparable damage to persons.
7. That the facts presented by the Commission in this case reveal *prima facie* a threat to the lives and safety of the members of the communities comprising the Community Council of the Jiguamiandó and the families of the Curbaradó. The standard for *prima facie* evaluation of a case and the application of presumptions faced with the need for protection have led the Court to order provisional measures on several occasions .
8. That the Inter-American Commission has adopted precautionary measures that have not produced the required effects and, to the contrary, recent events suggest that the members of the Communities are at grave risk.
9. That, even though, on other occasions, the Court has considered it essential to specify the persons who run the risk of suffering irreparable damage in order to grant measures of protection, it has subsequently ordered the protection of a number of persons who had not been named previously, but who could be identified and verified and who were in a situation of grave danger because they belonged to a community . In this case, as indicated by the Commission, it is evident that the communities comprising the Community Council of the Jiguamiandó and the families of the Curbaradó, made up of approximately 2,125 persons, forming 515 families, constitute an organized community, situated in a specific geographical location in the municipality of Carmen del Darién, Department of Chocó, whose members can be identified and specified and who, because they form part of the said community, are all in a situation of equal risk of suffering acts of aggression against their safety and lives, as well as being forcibly displaced from their territory, a situation that prevents them from exploiting the natural resources necessary for their subsistence. Accordingly, this Court considers that it is appropriate to order provisional measures of protection for the members of the communities composed of the Community Council of the Jiguamiandó and the families of the Curbaradó that encompass all the members of the said communities.

10. That the situation endured by the communities comprising the Community Council of the Jiguamiandó and the families of the Curbaradó, as described by the Commission, has obliged their members to displace themselves to jungle zones or other regions; therefore, the State must ensure that the persons benefiting from these measures may continue living in their habitual residence and provide the necessary conditions for the displaced persons from these communities to return to their homes .

11. That, in order to guarantee effectively the rights enshrined in the American Convention, the State Party has the obligation, erga omnes, to protect all persons subject to its jurisdiction. In the Court's opinion, this means that the said general obligation is imperative not only with regard to the State authorities, but also in relation to the acts of individual third parties, even irregular armed groups of any kind. The Court observes that, given the particular characteristics of the instant case, and the general situation of the armed conflict in the State of Colombia, it is necessary to protect all the members of the Communities by provisional measures, in light of the provisions of the American Convention and international humanitarian law .

12. That the Court is not considering the merits of the case to which the Commission's request refers and, therefore, the adoption of provisional measures does not imply a decision on the merits of the existing dispute between the petitioners and the State .

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

in exercise of the authority conferred on it by Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure,

DECIDES:

1. To call upon the State of Colombia to adopt forthwith all necessary measures to protect the lives and safety of all the members of the communities composed of the Community Council of the Jiguamiandó and the families of the Curbaradó.
2. To call upon the State of Colombia to investigate the acts that gave rise to the adoption of these provisional measures in order to identify those responsible and impose the corresponding punishment.
3. To call upon the State of Colombia to adopt all necessary measures to ensure that the persons benefiting from these measures may continue living in their place of residence, free from any kind of coercion or threat.
4. To call upon the State of Colombia, in accordance with the provisions of the American Convention on Human Rights, to grant special protection to the so-called "humanitarian refuge zones" established for the communities comprising the Community Council of the Jiguamiandó and the families of the Curbaradó and, to that effect, to adopt the necessary measures so that they may receive all the humanitarian aid sent to them.
5. To call upon the State of Colombia to ensure the necessary security conditions so that the members of the communities comprising the Community Council of the Jiguamiandó and the families of the Curbaradó, who have been forcibly displaced to jungle zones or other regions, may return to their homes or to the "humanitarian refuge zones" established for these communities.

6. To call upon the State of Colombia to establish a continuous monitoring and permanent communication mechanism in the so-called “humanitarian refuge zones,” in accordance with the terms of this Order.
7. To call upon the State of Colombia to allow the representatives appointed by the beneficiaries of these measures to take part in their planning and implementation and, in general, to keep them informed of progress in the measures ordered by the Inter-American Court of Human Rights.
8. To call upon the State of Colombia to report to the Inter-American Court of Human Rights on the provisional measures it has adopted in compliance with the provisional measures, within 15 days of notification of this order.
9. To call upon the Inter-American Commission on Human Rights to present its comments within two weeks of notification of the State’s report.
10. To call upon the State of Colombia, following its first report (supra eighth operative paragraph) to continue informing the Inter-American Court of Human Rights, every 30 days, on the provisional measures it has adopted, and to call upon the Inter-American Commission on Human Rights to present its comments on these reports of the State within two weeks of notification of the respective State report.

Judge Cançado Trindade informed the Court of his Concurring Opinion, and Judges García Ramírez and Abreu Burelli informed the Court of their Joint Concurring Opinion; both of which are attached to this order.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez
Hernán Salgado-Pesantes
Oliver Jackman
Alirio Abreu-Burelli

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary

CONCURRING OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. In voting in favour of the adoption of the present Provisional Measures of Protection, whereby the Inter-American Court of Human Rights orders that protection be extended to all the members of the Communities of the Jiguamiandó and of the Curbaradó in Colombia, I feel

obliged to make reference to my Concurring Opinion in the Resolution of Provisional Measures of Protection previously adopted by this Court, on 18 June 2002, in the Peace Community of San José de Apartadó Case. It is not my intention here to reiterate the considerations that I have developed in that other Concurring Opinion, but rather to single out briefly the central points of my reflections so as to secure the effective protection of human rights in a complex situation such as that of the present case of the Communities of the Jiguamiandó and of the Curbaradó.

2. In the present Resolution, the Court sustains, once again, its criterion to the effect that the Provisional Measures under Article 63(2) of the American Convention on Human Rights can protect the members of a collectivity or persons linked to it, who, although unnamed, are identifiable. We are, as the Court points out, before obligations *erga omnes* of protection, on the part of the State, to all persons under its jurisdiction; such obligations, as the Court indicates, are to be complied with "not only in relation to the power of the State but also with regard to acts of third parties (individuals), including irregular armed groups of any kind".

3. Such obligations *erga omnes* grow in importance in a situation of armed conflict, such as that of the present case affecting the members of the Community Council of the Jiguamiandó and of the Families of the Curbaradó. This is, in my view, a case which clearly requires the recognition of the effects of the American Convention *vis-à-vis* third parties (the *Drittwirkung*), without which the conventional obligations of protection would be reduced to little more than dead letter.

4. From the circumstances of the present case of the Communities of the Jiguamiandó and of the Curbaradó, it is clearly inferred that the protection of human rights determined by the American Convention Americana, to be effective, comprises not only the relations between the individuals and the public power, but also their relations with third parties (clandestine groups, paramilitary, and other groups of individuals). This reveals the new dimensions of the international protection of human rights, as well as the great potential of the existing mechanisms of protection, - such as that of the American Convention, - set in motion in order to protect collectively the members of a whole community, even though the basis of action is the breach - or the probability or imminence of breach - of individual rights.

5. As I pondered in my aforementioned Concurring Opinion in the Peace Community of San José de Apartadó Case,

"The juridical development of the obligations *erga omnes partes* of protection assumes an increasingly greater importance, above all in the face of the diversification of the sources (including the non-identified ones) of violations of human rights, - so evident in a situation of internal armed conflict as in the present case. Such situation, in its turn, requires the recognition of the effects of the American Convention *vis-à-vis* third parties (the *Drittwirkung*), besides revealing the approximations and convergences between the norms of the American Convention Americana and those of International Humanitarian Law, as well as the potential of action of the Provisional Measures of Protection in this context, in which they are endowed with a character, more than precautionary, truly tutelary, in safeguarding human rights" (par. 19).

It has been, in fact, the new needs of protection of the human being - disclosed by situations such as that of the present case - that have, to a great extent, fostered in recent years the convergences, - at normative, hermeneutic and operative levels, - between the three branches of protection of the rights of the human person, namely, the International Law of Human Rights, International Humanitarian Law and the International Law of Refugees .

6. The measures adopted by this Court, in the present case of the Communities of the Jiguamiandó and of the Curbaradó, as well as in the previous cases of the Peace Community of San José de Apartadó (2000-2002) and of the Haitians and Dominicans of Haitian Origin in the Dominican Republic (2000-2002), are directed to the sense of the gradual formation of a true right to humanitarian assistance. Such measures have already saved many lives, have protected the right to personal integrity and the right of circulation and residence of numerous human beings, strictly within the framework of Law . In our days, one ought to concentrate attention on the contents and juridical effects of the emerging right to humanitarian assistance, in the framework of the treaties on human rights, Humanitarian Law, and Refugee Law, so as to refine its elaboration, to the benefit of the titulaires of that right.

7. The recent practice of the Inter-American Court on provisional measures of protection, to the benefit of the members of human collectivities, discloses that it is perfectly possible to sustain the right to humanitarian assistance in the framework of Law, and never by indiscriminated use of force. The emphasis ought to fall on the persons of the beneficiaries of humanitarian assistance, and not on the potential of action of the agents materially capable to render it, - in recognition of the necessary primacy of Law over force. The ultimate foundation of the exercise of the right to humanitarian assistance lies in the inherent dignity of the human person. Human beings are the titulaires of the protected rights, and the situations of vulnerability and suffering in which they find themselves, above all in situations of poverty, economic exploitation, social marginalization and armed conflict, stress the obligations erga omnes of protection of the rights which are inherent to them.

8. The recognition of those obligations fits into the current process of humanization of international law. In fact, to the construction of a more institutionalized international community corresponds a new jus gentium, centred on the needs and aspirations of the human being and not of the political or social collectivities to which he belongs. In this new scenario, we can visualize the formation and consolidation of an authentic legal regime of obligations erga omnes of protection of the human being. The day in which these latter consolidate, it would at last be crystallized the actio popularis in international law, for the compliance with the aforementioned obligations erga omnes, lato sensu (and no longer only erga omnes partes), of protection.

Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura-Robles
Secretary

CONCURRING OPINION OF JUDGES SERGIO GARCÍA RAMÍREZ AND ALIRIO ABREU BURELLI

The jurisprudence of the Inter-American Court of Human Rights has evolved considerably with regard to the subjective scope of the provisional measures adopted by the Court. This evolution is appropriate considering the important ends that provisional measures are intended to achieve.

In our concurring opinion to the Order for provisional measures of November 24, 2000, in the case of the Peace Community of San José de Apartadó, we indicated the pertinence of expanding the scope of the measures, when advisable, so as to encompass a group of identifiable persons, even when they had not yet been specified precisely. On that occasion, we said that the reason to proceed as called for in our separate opinion - and, of course, in the Court's Order itself - was the fact that the plurality covered by the measures was composed of persons "who are potentially placed in the situation of being victims of acts by authorities or persons connected to them in one way or another."

We also observed that "membership of the group of potential victims who benefit from the measures is not based on the precise identification and indication of each individual by name, but according to objective criteria - based on the linkage of membership and the observed risks - which will permit the beneficiaries to be specified when the measures are implemented. The intention is to encompass the danger faced by the members of a community, not merely a few individuals, as is generally the case. It is also necessary to take into account that one of the elements of this case, which could characterize other cases, is that the potential victims choose not to provide their names, owing to the very real risk that this identification might increase their exposure to the irreparable damage that we are trying to prevent."

We are pleased to observe that this criterion, accepted for the first time in the said Order corresponding to the Peace Community of San José de Apartadó, is the one that prevails today in the Court's jurisprudence, as can be observed in the measures adopted for the Communities of the Jiguamiandó and the Curbaradó. In this case, the measures encompass a group of identifiable persons who, because they form part of a community, are in a situation of grave risk. Also, the State's obligation to protect the beneficiaries of the measures does not exist merely in relation to the formal agents of the State itself, but also in relation to the actions of individual third parties who may violate the rights of the beneficiaries, as described in the Order to which this concurring opinions corresponds.

Sergio García-Ramírez
Judge

Alirio Abreu-Burelli
Judge

Manuel E. Ventura-Robles
Secretary