

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS* OF FEBRUARY 2, 2006
PROVISIONAL MEASURES REGARDING COLOMBIA
MATTER OF THE PEACE COMMUNITY OF SAN JOSÉ DE APARTADÓ**

HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", or "the Court") of October 9, 2000.
2. The Order of the Inter-American Court of November 24, 2000, whereby the Order of the President of the Court (hereinafter "the President") of October 9, 2000 was ratified in all its parts (*supra* Having Seen clause No. 1).
3. The Order of the Court of June 18, 2002, which called upon the State of Colombia (hereinafter "the State" or "Colombia") to maintain the provisional measures set forth in the Order of the President of the Court (hereinafter the "President") of October 9, 2000 and the Order of the Court of November 24, 2000 (*supra* Having Seen clauses No. 1 and 2).
4. The Order of the Inter-American Court of November 17, 2004, which called upon the State, *inter alia*, to maintain the measures taken and to adopt, forthwith, such measures as may be necessary to effectively protect the life and the right to humane treatment of the members of the Peace Community of San José de Apartadó (hereinafter "the Peace Community" or "the Community"), as set forth in the Order of the President of October 9, 2000 and the Orders of the Court of November 24, 2000 and June 18, 2002.
5. The Order of the Inter-American Court of March 15, 2005, directing the State, *inter alia*, to adopt the provisional measures ordered by the Court, as set forth in the Order of the President of October 9, 2000 and the Orders of the Court of November 24, 2000, June 18, 2002 and November 17, 2004 for the benefit of all the members of the Peace Community.
6. The communication of the State, received on March 15, 2005, requesting a fifteen-day extension therefrom to submit the relevant report on provisional measures. The note of the Secretariat of the Court (hereinafter "the Secretariat") of March 30,

* Judge Diego García-Sayán informed the Court that, for reasons beyond his control, he would not be able to attend the deliberation and signing of this Order.

2005, referring to operative paragraph number three of the Order issued by the Court on March 15, 2005, whereby Colombia was granted a 30-day period to submit the report and requested to include in such report the information that should have been provided on February 16, 2005.

7. The notes of the State of April 22 and May 13, 2005, requesting a 20-day extension to submit the report on the provisional measures ordered in operative paragraph number three of the Order issued by the Court on March 15, 2005. The notes of the Secretariat of April 25 and May 16, 2005, whereby, following the President's instructions, the State was granted the requested extensions until May 12 and 27, 2005 respectively.

8. The communication by the representatives of the beneficiaries of the provisional measures (hereinafter "the representatives") of June 7, 2005, in which they stated, *inter alia*, that:

- a) the State, during 2004, repeatedly failed to comply with the obligation to submit periodic reports, and
- b) one of the most important aspects for the implementation of the measures has been the follow-up mechanism between the beneficiaries, their representatives and the different official agencies involved. However, the State shattered all efforts at agreement when it established a police post in San José during the first week of April, 2005.

9. The communication of the State of June 9, 2005, whereby, following the President's orders, the State was required to submit, without delay, the relevant State report in response to the provisions laid out in operative paragraph number three of the Order of the Court issued on March 15, 2005, which was due on May 27, 2005.

10. The note of the State, received on June 16, 2005, requesting a fifteen-day extension therefrom to submit the relevant report on the provisional measures. The communication of the Secretariat of June 16, 2005, stating that the period to submit such report, including the two extensions granted, expired on May 27, 2005. Therefore, following the President's directions, the State was informed that the requested extension had been denied and was required to submit, as soon as possible, the report requested by the Court in the aforesaid Order of March 15, 2005 (*supra* Having Seen clause No. 5).

11. The note of the Secretariat of July 4, 2005, whereby, following the President's instructions, the State was required once again to submit the report requested by the Court in the aforesaid Order of March 15, 2005 (*supra* Having Seen clause No.5).

12. The report of the State, received on July 20, 2005, in which the State referred to the general situation of San José de Apartadó and reiterated the information provided during the public hearing held on March 14, 2005. In addition, the State reported, *inter alia*, that:

- a) on August 11, 2004 a device exploded in the house of leader Luis Eduardo Guerra-Guerra in San José de Apartadó, and the Community requested the State to investigate the incident. The Public Prosecutor's Office established a judicial commission, whose members arrived in San José de Apartadó on August 19, 2004 and conducted an inspection of the scene, took testimonies and gathered evidence. Currently, the investigation is in the preliminary stage;

- b) on February 23, 2005, the State "gained knowledge of the alleged murder" of Mr. Luis Eduardo Guerra-Guerra, leader of the Peace Community, his partner Beyanira Aleiza Guzmán, his son Deiner Andrés Guerra-Tuberquia and of Mr. Alfonso Bolívar-Tuberquia, his wife Sandra Milena Muñoz-Posso, his two children Natalia and Santiago Tuberquia-Muñoz, aged 6 and 2 respectively, and a person who worked for him, called Alejandro Pérez. The Community laid the responsibility on the army. The State "denied" this version and referred to certain circumstantial evidence suggesting that the *Fuerzas Armadas Revolucionarias de Colombia* - FARC (Revolutionary Armed Forces of Colombia) were responsible for the incidents. With respect to the murder case of Mr. Alfonso Bolívar Tuberquia's et al, the *Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario* (National Unit on Human Rights and International Humanitarian Law) gained knowledge of the events on February 24, 2005. A judicial commission composed of prosecutors, agents of the Colombian Attorney General's Office and criminologists was created. On February 26, 2005, the bodies of Luis Eduardo Guerra-Guerra, his partner and his son were found in the hamlet of Alto Mulatos;
- c) "local residents refused to cooperate with the authorities [...]. The report of the [judicial] commission state[d] that the Peace Community did not cooperate with the investigators and that the refusal of [...the] witnesses to give testimony was unanimous [...];"
- d) the Ministry of Defense had officially announced that "the troop status report (INSITOP), [which issues] a daily report, [...] through a GPS (Global Positioning System) device that reports the position of the troops, indicates that the units accused by the members of the Peace Community of perpetrating the massacre were located in a distant area that day;"
- e) On April 16, 2005, a socio-policial mission was conducted to provide the Community with medical assistance - pediatrics, orthopedics, psychology, consultations and vaccination, among other services;
- f) in response to the complaints received regarding abuses by armed groups, the inefficiency of the State in providing protection, and the almost permanent intrusion of a paramilitary checkpoint on the road leading to San José de Apartadó, the State informed that the policy in place was that of "[c]ommunication with the community; [p]resence of police forces across the region; [f]ight against illegal groups; [p]rotection of the Community; [c]oordinated action of State agencies [...]; and [s]upport to investigative and oversight authorities;"
- g) it decided to set up a Police Station in San José de Apartadó and to order the presence of the community police at all times, accompanied by the community ombudsman, the Government of Antioquia and the Mayor's Office of Apartadó;
- h) as a result of the incidents occurred in three communities of San José de Apartadó, there are approximately 80 investigations in progress, distributed as follows: two in the *Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario* (National Unit on Human Rights and International Humanitarian Law) in Bogotá, twenty-six in the National Unit on Human Rights and International Humanitarian Law in Medellín; forty cases in the Specialized Prosecutor's Office in and for Apartadó and specialized prosecutor's offices in Medellín;
- i) the *Procuraduría Delegada Disciplinaria para la Protección de los Derechos Humanos* (Delegate Disciplinary Attorney General's Office for the Protection of Human Rights) informed, in relation to the incidents occurred, especially in San José de Apartadó, that there was a total of twenty-three

cases; that it was decided to close five cases; six cases were referred to the Colombian Public Prosecutor's Office for reasons of jurisdiction; one was referred to the *Inspección General del Ejército Nacional* (Army Inspector General's Office); eight were requested by the Colombian Attorney General's advisors and others were referred to the commission.

13. The brief by the representatives, received on August 16, 2005, in which they included their comments on the report submitted by the State and pointed out, *inter alia*, that:

- a) the repeated failure of the State to comply with the submission of periodic reports is a matter of concern, especially considering that the Order of the Court of March 15, 2005 directed the State to submit a report within a period of 30 days and the State delayed its submission for over three months;
- b) the State report did not provide any conclusive results regarding the investigation into the massacre of February 21, 2005, which claimed the life of children Deyner Andrés Guerra-Tuberquia, Natalia Andrea Bolivar-Muñoz and her brother Santiago; member of the *Consejo Interno* (Internal Council) Luis Eduardo Guerra-Guerra, and his partner Bellanira Aleiza Guzmán, and community leader Luis Alfonso Bolivar-Tuberquia, his wife Sandra Milena Muñoz-Posso, and the farmer, Mr. Alejandro Pérez. They allow themselves to sustain, based on certain circumstantial evidence, that the events would have allegedly been the responsibility of the members of the 17th Brigade of the Army, and that neither the Colombian Public Prosecutor's Office nor the Colombian Attorney General's Office in charge of the criminal and disciplinary investigations respectively have obtained any kind of results;
- c) in relation to the criminal and disciplinary investigations, the State included "a series of statistical data without providing the source of that information. [...]t is strange that the State refers to a total of 80 criminal investigations given that in [previous] reports the figures were completely different[...];"
- d) a series of incidents took place between February 19 and June 24, 2005, related to the arrival of army units in some hamlets of San José de Apartadó and with the action reportedly taken by army and police officers. These incidents include: the stealing of money and various items from the house of Mr. Norbey Sepúlveda, a resident of Las Nieves; the shootings and the injuries caused to child Diana Marcela Guzmán and militiaman Marcelino Moreno, the latter of whom died; the attempt to kill two residents of Las Nieves, who hid in the woods for ten days; the interception by two men in civilian clothes of Messrs. Alirio Cartagena and Dumar Aleiza, who were targeted as members of the guerrilla and subsequently arrested without a warrant by police officers and taken to the Army Headquarters; the arrest and murder of Luis Eduardo Guerra-Guerra, Bellanira Aleiza Guzmán and child Deiner Andrés Guerra-Tuberquia; the deprivation of liberty of six families of the hamlet of Mulatos; the bombing of the hamlets of Bellavista, Buenos Aires and Alto Bonito, in San José de Apartadó, where many animals that were crucial to the livelihood of local people died; the displacement of the residents of San José to the farm *La Holandita* due to raids conducted by police forces, who announced the decision to stay permanently in the community, and the radio broadcast of General Carlos Alberto Ospina's statement, Commander General of Military Forces, "who began to spread false information on the [people] of the massacre of February 21 in the hamlets of Mulatos and La Resbalosa in San José de Apartadó intended to stigmatize the memory of the victims and to lay the responsibility

for the massacre on other groups,” and of General Jorge Daniel Castro’s interview, General Director of the Police, who referred to Sister Clara Lagos, member of the Peace Community. Subsequently, said director ordered that she be investigated in connection with a violent incident, and

e) the National Director of the Police and the Mayor of Apartadó organized vaccination rounds and offered the services of dentists and barbers, but the people who were still living in the community of San José rejected their services.

14. The communication of the representatives of October 17, 2005, in which they included the “Right to Petition No. 11”, addressed to the President of Colombia in favor of the Peace Community, which contains a description of a series of events that the representatives requested the Court to consider when examining the response of the State to the requirements of the Court in the follow-up process of the provisional measures.

15. The note of the Secretariat of October 18, 2005, whereby, following the President’s orders, the Inter-American Commission was called upon to submit its comments on the State report of July 20, 2005, forwarded to the Commission on July 22, 2005, and which were due on September 2, 2005 (*supra* Having Seen clause No. 12). In addition, the State was required to submit its report, which was due on September 15, 2005.

16. The communication of the representatives of November 22, 2005, reporting that “on November 17, 2005, at 10.30 am, the coordinator of the humanitarian zone of Arenas Altas, Arlen Salas David, was in the hamlet [... when] members of the army arrived in the area, firing bursts of machine-gun fire [...] and then[,] they threw a fragmentation grenade. Mr. Salas David was fatally wounded in the attack [...],” and Mr. Hernán Goez was injured.

17. The communication of the representatives of November 27, 2005, in which they provided information about the submission of the “last Right to Petition addressed to the President of Colombia and the response to the Legal Secretary of the Presidency [...,] and a Right to Petition addressed to the Public Prosecutor regarding one of the latest incidents” in the Peace Community.

18. The note to the Secretariat of November 28, 2005, whereby, following the President’s instructions, the State was called upon to submit its report, which was due on November 15, 2005, and to include in said report information regarding the events mentioned in the communication of the representatives of November 22, 2005 (*supra* Having Seen clause No. 16).

19. The communication by the representatives of December 20, 2005, providing information about alleged incidents of harassment against attorney Elkin de Jesús Ramírez-Jaramillo and stating, *inter alia*, that:

a) attorney Elkin de Jesús Ramírez-Jaramillo, member of the *Corporación Jurídica Libertad* (CJL), would have allegedly been the subject of intimidation and of a complaint brought against him in connection with his services as representative of the members of the Peace Community, beneficiaries of the provisional measures, in the proceedings before the Inter-American human rights system.

- b) colonel Néstor Iván Duque, commander of the Engineer Battalion "Carlos Bejarano Muñoz" attached to the 17th Brigade of the National Army, filed a criminal complaint against Priest Javier Giraldo, Miguel Ángel Afanador and Elkin de Jesús Ramírez-Jaramillo "for their responsibility for the alleged defamation and false allegations made in different briefs submitted to the [Inter-American Court], the President of Colombia, other international bodies for the protection of human rights and domestic legal actions], which describe different criminal acts committed against the members of the Peace Community;
- c) the criminal complaint was filed with the Sectional Prosecutor's Office No. 205 in and for Bogotá under no. 802.316, and Mr. Ramírez Jaramillo has been denied his right to defense and to an adversarial proceeding, and
- d) the Court should urge the State to "guarantee the right to life, humane treatment and safety of attorney Elkin de Jesús Ramírez-Jaramillo; [...] and all procedural safeguards in the criminal proceeding instituted by the Sectional Prosecutor's Office No. 205 in and for Bogotá, and to ensure that all acts of intimidation against [Mr. Elkin de Jesús Ramírez-Jaramillo] come to an end."

20. The communication of the Secretariat of December 22, 2005, whereby, following the President's instructions, the State was required to submit a report regarding the incidents against Mr. Elkin de Jesús Ramírez-Jaramillo, representative of the beneficiaries of the measures, by January 3, 2006. In addition, the State was requested once again to submit the State report, which was due on November 15, 2005 (*supra* Having Seen clause No. 18).

21. The brief of the Inter-American Commission of December 23, 2005, stating, *inter alia*, the need to put on record its concern about the events recently informed by the representatives in the sense that "since the date of the last Order of the Court on this matter a number of incidents of harassment, theft and usurpation, attacks and attempts of murder against members of the Community have taken place [a]mong them, the murder of Mr. Arlen Salas David." The Inter-American Commission also indicated that it had recently received information that massive acts of may be perpetrated against the Peace Community, and expressed its concern over this situation, particularly because since July 2005 the State had failed to provide the Court with information on the reported incidents or the measures adopted.

22. The note of the Secretariat of January 6, 2006, whereby, following the President's instructions, the request to the State to submit the report regarding the alleged incidents against Mr. Elkin de Jesús Ramírez-Jaramillo was reiterated (*supra* Having Seen clause No. 20).

23. The note to the Secretariat of January 24, 2006, whereby, following the President's instructions, the State was called upon to submit the report, which was due on January 3, 2006, and to include in said report information regarding the incidents mentioned in the communication of the representatives of December 22, 2005 (*supra* Having Seen clause No. 20). In addition, the State was required to submit the bimonthly report, which was due on January 15, 2006.

24. The brief of the representatives of January 25, 2006, notifying that the *Corporación Jurídica Libertad* "ha[d] formally resigned as representative before [the Court] in the case of the provisional measures ordered in favor of the Peace Community of San José de Apartadó."

25. The communication of the Secretariat of January 26, 2006, whereby, following the President's directions, the Court acknowledged the resignation of the *Corporación Jurídica Libertad* as representative of the beneficiaries of these measures, and requested the Commission and the *Corporación Jurídica Libertad* to inform the Court as to who would be representing the beneficiaries of these provisional measures.

CONSIDERING:

1. That Colombia ratified the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") on July 31, 1973 and recognized the jurisdiction of the Inter-American Court, in accordance with Article 62 thereof, on June 21, 1985.

2. That 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. That Article 25(1) of the Court Rules of Procedure provides that "[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."

4. That Article 1(1) of the Convention establishes the general obligation of the States Parties to respect the rights and freedoms enshrined therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, which entails the duty to adopt such measures as may be necessary to ensure their protection. These obligations become even more apparent in relation to those involved in proceedings before the supervisory bodies of the American Convention.¹

5. That under International Human Rights Law, provisional measures are not only precautionary in the sense that they preserve a legal situation, but fundamentally protective in that they safeguard human rights, insofar as they seek to prevent irreparable damage to persons. Provided that the basic requirements of extreme gravity and urgency and the need to prevent irreparable damage to persons are met, provisional measures become a true preventive judicial guarantee.²

¹ Cf., *inter alia*, *Matter of Eloisa Barrios et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering clause No. 6, *Matter of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 15, 2005, Considering clause No. 5, and *Matter of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 15, 2005, Considering clause No. 5.

² Cf., *inter alia*, *Matter of Eloisa Barrios et al.*, *supra* note 1, Considering clause No. 7; *Matter of Luisiana Ríos et al (Radio Caracas Televisión - RCTV)*. Provisional Measures. Order of the Inter-American Court of Human Rights of September 12, 2005, Considering clause No. 4, and *Matter of Urso Branco Prison*. Provisional Measures. Order of the Inter-American Court of Human Rights of September 21, 2005, Considering clause No. 5.

6. That in order to make the rights enshrined in the American Convention effective, the State Party has the obligation, *erga omnes*, to protect all persons under its jurisdiction. In the opinion of the Court, said general obligation extends not only to the power of the State but also to the actions of private individuals, including any kind of irregular armed groups. The Court notes that given the special circumstances of the instant case, and the general situation of the armed conflict in the State, it is necessary to ensure the protection, through provisional measures, of all members of the Community, in accordance with the provisions of the American Convention and of International Humanitarian Law.³

7. That pursuant to Article 63(2) of the Convention it is compulsory for the State to adopt such provisional measures as this Court may order, insofar as the basic principle of the Law of State Responsibility, supported by international case law, provides that States must fulfill their treaty obligations in good faith (*pacta sunt servanda*).

8. That this Court has, on past occasions,⁴ ordered the protection of a plurality of persons who have not been previously named but who can be identified and determined and who are in grave danger because they are part of a group or community. The Peace Community of San José de Apartadó, of approximately 1,200 people, is an organized community, located in a specific geographic location, whose members may be identified and recognized and, because they belong to said community, they all face the same risk of aggression against their personal integrity and life.

9. That given that the situation existing in the Peace Community has forced its residents to move to other regions of the country, it is necessary for the State to ensure that the beneficiaries of these measures can continue to live in their usual residence⁵ and to provide the necessary conditions so that those members of the Community who have been forced to leave may return to their homes.

10. That the State must guarantee the protection of the civilians that are the beneficiaries of these provisional measures, in accordance with the provisions of the American Convention and the rules of International Humanitarian Law, and ensure that said rules are observed by all agents, whether state or private, in the context of the domestic armed conflict in Colombia.⁶

³ Cf., *inter alia*, *Matter of the Peace Community of San José de Apartadó*, *supra* note 1, Considering clause No. 9, and *Matter of the Communities of Jiguamiandó and Curbaradó*, *supra* note 1, Considering clause No. 8.

⁴ Cf., *inter alia*, *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 17, 2005, Considering clause No. 6, *Matter of Luisiana Ríos et al (Radio Caracas Televisión – RCTV)*, *supra* note 2, Considering clause No. 11, and *Matter of the Peace Community of San José de Apartadó*, *supra* note 1, Considering clause No. 7.

⁵ Cf., *inter alia*, *Matter of the Communities of Jiguamiandó and Curbaradó*, *supra* note 1, Considering clause No. 10, *Matter of the Peace Community of San José de Apartadó*, *supra* note 1, Considering clause No. 8, and *Matter of Giraldo Cardona*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 5, 1997, Considering clause No. 5.

⁶ Cf., *inter alia*, *Matter of the Peace Community of San José de Apartadó*, *supra* note 1, Considering clause No. 9, and *Matter of the Communities of Jiguamiandó and Curbaradó*, *supra* note 1, Considering clause No. 8.

11. That the Court considers it appropriate to urge the State to guarantee the principle of distinction of International Humanitarian Law in relation to the members of the Peace Community, who are civilians that are not involved in the domestic armed conflict.

12. That in accordance with the Order of the President of October 9, 2000 and the Orders of the Inter-American Court of November 24, 2000, June 18, 2002, November 17, 2004 and March 15, 2005, the State must adopt such measures as may be necessary to protect the life and the right to humane treatment of all the members of the Peace Community (*supra* Having Seen clauses No. 1, 2, 3, 4 and 5).

13. That pursuant to operative paragraph number six of the Order issued by the Court on March 15, 2005, the State must submit a report on the implementation of the provisional measures every two months. In addition, the Inter-American Commission and the representatives must submit their comments on the State reports (*supra* Having Seen clause No. 5).

14. That, on July 20, 2005, the State submitted the report requested in operative paragraph number three of the Order issued by the Court on March 15, 2005 (*supra* Having Seen clauses No. 5 and 12).

15. That the State has failed to submit the bimonthly reports due on September 15 and November 15, 2005 despite repeated requests from the Secretariat, as instructed by the President. Nor has the report requested to the State on December 22, 2005 and due on January 3, 2006 been received (*supra* Having Seen clauses No. 15, 18, 20 and 23). Moreover, the State has also failed to submit the following bimonthly report regarding compliance with the measures, which was due on January 15, 2006 despite the Court's request (*supra* Having Seen clause No. 20).

16. That the Inter-American Commission has failed to submit comments on the State report of July 20, 2005, despite the request from the Secretariat, as instructed by the President (*supra* Having Seen clause No. 15).

17. That the Court has established that failure by the State to comply with its duty to report on the provisional measures adopted in compliance with the Court's decisions is particularly serious given the legal nature of these measures, which seek to prevent irreparable damage to persons in situations of extreme gravity and urgency.⁷

18. That the duty to report to the Court on the implementation of measures is twofold, which, for effective compliance, requires the formal submission of a document within the specified time limit and with specific, updated, detailed and factual information on the issues to which this obligation refers.⁸ It is most urgent that the

⁷ Cf., *inter alia*, *Matter of the Peace Community of San José de Apartadó*, *supra* note 1, Considering clause No. 12, *Matter of the Communities of Jiguamiandó and Curbaradó*, *supra* note 1, Considering clause No. 11, and *Case of Bámaca-Velásquez*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 11, 2005, Considering clause No. 15.

⁸ Cf., *inter alia*, *Matter of Luisiana Ríos et al (Radio Caracas Televisión – RCTV)*, *supra* note 2, Considering clause No. 17; *Matter of Luis Uzcátegui*. Provisional Measures. Order of the Inter-American Court of Human Rights of December 2, 2003, Considering clause No. 12, and *Matter of Marta Colomina and Liliana Velásquez*. Provisional Measures. Order of the Inter-American Court of Human Rights of December 2, 2003, Considering clause No. 14.

State submit a thorough report insofar as it has failed to present the three bimonthly reports due between September 2005 and January 2006, as well as the report requested on December 22, 2005, which was due on January 3, 2006.

19. That the Court would also like to emphasize the importance of the submission of comments by the Commission and the representatives of the beneficiaries on the information provided by the State. The Court considers it necessary to point out that the Commission's comments are essential to evaluate the implementation on the part of the State of the provisional measures ordered by the Court, especially considering the severity of the situation and dangerous conditions facing the beneficiaries as well as the fact that the Inter-American Commission, as an organ of the inter-American system, must provide for the protection of human rights.

20. That the State referred, *inter alia*, to the murders of Mr. Luis Eduardo Guerra-Guerra, his wife and son, as well as to those of Mr. Alfonso Bolívar-Tuberquía, his wife and two children and Mr. Alejandro Pérez, who worked for Mr. Tuberquía, on February, 2005. In addition, the State indicated that the Colombian Public Prosecutor's Office and Attorney General's Office created a judicial commission to investigate said incidents and stated that the residents of the community refused to cooperate with the authorities. Furthermore, given the situation existing in San José de Apartadó, the State informed the implementation of the following policies: "[c]ommunication with the Community; [p]resence of police forces; [f]ight against illegal groups; protection of the Community; [c]oordinated action of State agencies [...]; and [s]upport to investigative and oversight authorities," and the establishment of a police station in San José de Apartadó, with permanent presence of the community police accompanied by the community ombudsman, the Government of Antioquia and the Mayor's Office of Apartadó. Finally, the State provided information on approximately 80 investigations that are being conducted by the *Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario* (National Unit on Human Rights and International Humanitarian Law) in Bogotá and Medellín, and by the Specialized Prosecutor's Offices in Apartadó and Medellín, and on the cases pending in the *Procuraduría Delegada Disciplinaria para la Protección de los Derechos Humanos* (Delegate Disciplinary Attorney General's Office for the Protection of Human Rights) since 2002 (*supra* Having Seen clause No. 12).

21. That the representatives have expressed, *inter alia*, their concern over the continued failure by the State to comply with the submission of periodic reports; the fact that the State report did not provide any conclusive results regarding the investigation into the massacre of February 21, 2005, which claimed the life of children Deyner Andrés Guerra-Tuberquia, Natalia Andrea and Santiago Bolivar-Muñoz, member of the *Consejo Interno* (Internal Council) Luis Eduardo Guerra-Guerra, his partner Bellanira Areiza Muñoz, and community leader Luis Alfonso Bolivar-Tuberquia, his wife Sandra Milena Muñoz-Posso and farmer Alejandro Pérez. In addition, they stated that on November 17, 2005, members of the army arrived in the hamlet of Arenas Altas, firing bursts of machine-gun fire and a fragmentation grenade, fatally wounding Mr. Arlen Salas David and injuring Mr. Hernán Goez. In relation to the criminal and disciplinary investigations, the representatives indicated that the State provided "a series of statistical data without citing the source of that information. [...] It is strange that the State refers to a total of 80 criminal investigations given that in [previous] reports the figures were completely different[...]." They also referred to a series of incidents that took place upon the arrival of army units in the hamlets of San José de Apartadó between February 19 and June 24, 2005, due to the action

reportedly taken by the army and the police. Finally, they stated that attorney Elkin de Jesús Ramírez-Jaramillo, member of the *Corporación Jurídica Libertad* (CJL), is reportedly being the subject of intimidation and of a complaint brought against him in connection with his services as representative of the members of the Peace Community, beneficiaries of the provisional measures, in the proceedings before the Inter-American human rights system (*supra* Having Seen clauses No. 13, 16, and 19).

22. That the Inter-American Commission expressed, *inter alia*, concern over the incidents recently reported by the representatives, in the sense that "since the date of the last Order of the Court [...] a number of incidents of harassment, theft and usurpation, attacks and attempts of murder against members of the Community have taken place [,a]mong them, the murder of Mr. Arlen Salas David" and the injuries caused to Mr. Hernán Goez, as well as over the information received by the Commission that massive acts of violence may be perpetrated against the Peace Community and the fact that, since July 2005, the State has failed to provide information to the Court regarding the reported incidents or the measures adopted (*supra* Having Seen clause No. 21).

23. That even after the adoption of these provisional measures, according to the information provided by the Commission and the representatives, the members of the Peace Community continue to be the target of threats, harassment, stigmatization, theft, usurpation, arbitrary detention, murder and attempt of murder and forced disappearance, reportedly by police forces -a situation that would have allegedly been worsened by military presence.

24. That given the severity of the situation facing the members of the Peace Community, as evidenced by the latest incidents reported by the Commission and the representatives, it is necessary to request the State once again to adopt immediately and efficiently all such measures as may be necessary to effectively ensure the full exercise of the right to life and to humane treatment of the members of the Community protected by these provisional measures.

25. That the Court considers it necessary that Colombia refer, in the report to be submitted, in accordance with this Order (*infra* Operative Paragraph No. 4), to the incidents mentioned by the representatives in their communications of August 16, November 22 and December 20, 2005 and by the Commission in the brief of December 23, 2005 (*supra* Having Seen clauses No. 13, 16, 19 and 21, and Considering clauses No. 21, 22 and 23) and to the measures being adopted to prevent acts against the life or the right to humane treatment of the beneficiaries of these measures.

26. That the State is under the obligation to investigate the facts that led to the adoption and maintenance of these provisional measures in order to identify the perpetrators and punish them accordingly.

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority vested in it by Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of the Court Rules of Procedure,

DECIDES:

1. To reiterate to the State the order to maintain the measures adopted and to immediately implement such measures as may be necessary to effectively protect the life and the right to humane treatment of all the members of the Peace Community of San José de Apartadó, as set forth in the Order of the President of the Court of October 9, 2000 and the Orders of the Inter-American Court of Human Rights of November 24, 2000, June 18, 2002, November 17, 2004, and March 15, 2005.
2. To reiterate to the State it must continue investigating the facts that led to the adoption of these provisional measures in order to identify the perpetrators and punish them accordingly.
3. To reiterate to the State that the beneficiaries of these measures or their representatives must be allowed to participate in the planning and implementation of the protective measures and, in general, must be kept informed of the progress made in relation to the measures ordered by the Inter-American Court of Human Rights.
4. To request the State to submit to the Inter-American Court of Human Rights, no later than March 15, 2006, the report on the provisional measures ordered, in accordance with Considering clauses No. 24, 25 and 26 hereof.
5. To request the representatives of the beneficiaries of the measures to submit to the Inter-American Court of Human Rights, within seven days following notice of the State report, such comments as they may deem appropriate.
6. To request the Inter-American Commission on Human Rights to submit to the Inter-American Court of Human Rights, within fifteen days following notice of the State report, such comments as it may deem appropriate.
7. To reiterate to the State that it must continue providing information to the Inter-American Court of Human Rights every two months regarding the provisional measures adopted, and to request the beneficiaries of these measures or their representative to submit their comments, within four weeks following notice of the State report, and the Inter-American Commission on Human Rights to submit its comments on said reports within six weeks following receipt.
8. To notify the Inter-American Commission on Human Rights, the representative of the beneficiaries and the State of this Order.

Judge Cañado Trindade informed the Court of his Concurring Opinion, which accompanies this Order.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

CONCURRING OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. In voting in favor of the adoption of this new Order of the Inter-American Court of Human Rights granting Provisional Measures of Protection in the *Matter of the Peace Community of San José de Apartadó*, regarding Colombia, I feel obliged to include in this Separate Opinion, albeit briefly, my personal reflections on the facts of the *cas d'espèce* and of other recent cases that have led the Court to order Provisional Measures of Protection. Currently, over 11,500 people (including members of entire communities), residing in Latin American countries and the Caribbean, are under the protection of provisional measures ordered by this Court.⁹ The implementation of these measures has extended and they have assumed considerable importance in the last decade, thus becoming a true preventive judicial *guarantee*.¹⁰ And the Inter-American Court, more than any other contemporary international court, has significantly contributed to their development in both International Human Rights Law and contemporary Public International Law.

2. Therefore, it is a matter of great concern to me to see that a remarkable legal remedy, which has saved many lives and prevented other irreparable damage to persons -holders of the rights protected by the American Convention on Human Rights-, begins to prove insufficient in certain extreme circumstances. I am deeply concerned that, in the last five years, as a direct result of the increasingly violent and dehumanized world in which we live, some individuals that were under the protection of provisional measures ordered by this Court have, however, been arbitrarily deprived of their lives.

3. This has taken place - paradoxically, *pari passu* with the extraordinary expansion of Provisional Measures of Protection under the American Convention - not only in this *Matter of the Peace Community of San José de Apartadó* regarding Colombia (2002-2006), but also in the *Matter of Eloisa Barrios et al* regarding Venezuela (2005), in the *Matter of Urso Branco Prison* regarding Brazil (2004-2006), in the *Matter of the Mendoza Prisons* regarding Argentina (2005-2006), in the *Matter of the Communities of Jiguamiandó and Curbaradó* regarding Colombia (2003-2006), in the *Matter of Children Deprived of Liberty in the "Complejo do Tatuapé" of FEBEM* regarding Brazil (2005-2006), and in the *Matter of James et al* regarding Trinidad y

⁹. In the *Matter of Pueblo indígena de Kankuamo* regarding Colombia only there are approximately 6,000 beneficiaries of the measures; in the *Matter of the Peace Community of San José de Apartadó* regarding Colombia, the beneficiaries are over 1,200; in the *Matter of the Communities of Jiguamiandó and Curbaradó* regarding Colombia, the beneficiaries are over 2,000; in the *Matter of Urso Branco Prison* regarding Brazil, almost 900 inmates benefit from the measures; in the *Matter of Pueblo indígena de Sarayaku* regarding Ecuador, there are approximately 1,200 beneficiaries; among several others.

¹⁰. A.A. Cançado Trindade, "Les Mesures provisoires de protection dans la jurisprudence de la Cour Interaméricaine des Droits de l'Homme", in *Mesures conservatoires et droits fondamentaux* (publ. G. Cohen Jonathan and J.-F. Flauss), Bruxelles, Bruylant/Nemesis, 2005, pp. 145-163; A.A. Cançado Trindade, "Les Mesures provisoires de protection dans la jurisprudence de la Cour Interaméricaine des Droits de l'Homme", 4 *Revista do Instituto Brasileiro de Direitos Humanos* (2003) pp. 13-25; A.A. Cançado Trindade, "The Evolution of Provisional Measures of Protection under the Case-Law of the Inter-American Court of Human Rights (1987-2002)", 24 *Human Rights Law Journal* - Strasbourg/Kehl (2003), n. 5-8, pp. 162-168.

Tobago (2000-2002). This requires a reaction from Law in order to protect the vulnerable and defenseless.

4. In the matters cited above, there has been, therefore, a clear failure to comply with the Provisional Measures of Protection ordered by the Court, which are more than precautionary; they are truly protective. Notwithstanding the merits of the aforesaid cases (the alleged or reported original violations of the American Convention), there has been a violation of protective measures, essentially preventive in nature, which effectively safeguard fundamental rights, - almost always irrevocable rights, such as the right to life -, insofar as they seek to prevent irreparable damage to the human being as subject of International Human Rights Law and contemporary Public International Law.

5. This means - and this is the fundamental point that I would like to emphasize in this Concurring Opinion, as I have consistently done in past Opinions-, that, notwithstanding the merits of the respective cases, *the concept of victim also emerges in the new context of the Provisional Measures of Protection*. There is no escaping this point, which puzzles and concerns me. On the other hand, also in this context of prevention of irreparable damage to the human being, the central importance of the human person, though victimized, is affirmed.¹¹

6. Provisional Measures of Protection impose obligations on the States, which are different from the obligations resulting from the Judgments rendered on the respective merits of the cases. There are actually obligations that result from Provisional Measures of Protection *per se*. They are completely different from the obligations that may be imposed by a Judgment on the merits (and reparations, if applicable) of the *cas d'espèce*. This means that Provisional Measures of Protection constitute an autonomous legal remedy; they actually have their own *legal framework*, which in turn, reveals the importance of the *preventive* dimension of the international protection of human rights.

7. So much so that, under the American Convention (Article 36(2)), the international liability of a State may arise from failure to comply with Provisional Measures of Protection ordered by the Court, even if the respective merits of the case are not pending before the Court (but rather before the Inter-American Commission on Human Rights). This confirms my thesis, which I set myself to advance in this Concurring Opinion, that Provisional Measures of Protection, in light of their autonomy, have their own legal framework, and failure to comply with them results in liability of the State. It has legal consequences, in addition to underscoring the central role of the victim (of such non-compliance), notwithstanding the consideration and decision of the specific case at issue upon its merits.

¹¹. Cf. A.A. Cançado Trindade, *El Acceso Directo del Individuo a los Tribunales Internacionales de Derechos Humanos* (Direct Access of Individuals to International Human Rights Courts), Bilbao, Universidad de Deusto, 2001, pp. 9-104.

8. In addition to the conventional basis provided by Article 63(2) of the American Convention, Provisional Measures are further reinforced by the general obligation of the States Parties, under Article 1(1) thereof, to respect and to ensure respect for the protected rights, without discrimination, of all persons under their respective jurisdiction. The broad scope of this general obligation, which also encompasses the provisional measures of protection, is analyzed in my recent Separate Opinion (paras. 15-21) in the Judgment of the Court in the *Case of the girls Jean and Bosico v. República Dominicana* (September 8, 2005), Separate Opinion (paras. 2-7 and 17-29) in the Judgment of the Court in the *Case of the "Mapiripán Massacre" v. Colombia* (September 15, 2005), and Separate Opinion (paras. 2-13) in the *Case of the Pueblo Bello Massacre v. Colombia* (January 31, 2006). The aforesaid Article 1(1) also provides the conventional basis for the obligations *erga omnes partes* under the Convention.

9. I have the feeling that, despite everything this Court has done in favor of the evolution of the Provisional Measures of Protection - and, I insist, more than any other contemporary international court- there is still a long way to go. It is necessary to preserve the already considerable legacy of said measures under the American Convention. It is necessary to conceptually strengthen their legal framework, for the benefit of the protected persons and of the victims of non-compliance (notwithstanding the merits of the respective cases). This becomes even more imperative where - as is the case in the *Matter of the Peace Community of San José de Apartadó* regarding Colombia- there are repeated acts of harassment and aggression (and even death threats), which reveal a growing pattern of intimidation and violence, against persons that were already under the protection of provisional measures ordered by this Court. This is absolutely imperative in a world that has become dehumanized and devoid of values.

10. Provisional Measures of Protection, the development of which under the American Convention to date has been a true victory of Law, are, however, in my opinion, still very much in their infancy, at an early stage of their evolution, and they will grow and strengthen even more as the universal juridical conscience awakens towards their complete conceptual refinement. International Human Rights Law has transformed the *conception* itself of these measures¹² - from precautionary to protective-, thus revealing the current historical process of *humanization* of Public International Law¹³ also in this particular field, however, this process is still in progress.

¹². A.A. Cançado Trindade, "Address by the President of the Inter-American Court of Human Rights", in *Compendium of Provisional Measures* (June 2001-July 2003), Volume No. 4, Series E, San José de Costa Rica, Inter-American Court of Human Rights, 2003, pp. V-XXII.

¹³. Cf. A.A. Cançado Trindade, "*La Humanización del Derecho Internacional y los Límites de la Razón de Estado*" (The Humanization of International Law and the Limits of the Reason of the State), 40 *Revista da Faculdade de Direito da Universidade Federal de Minas Gerais - Belo Horizonte/Brazil* (2001) pp. 11-23.

11. It is necessary to proceed resolutely in this direction. It is imperative, in these days, that the next step be the development of their legal framework, and, within such framework, of the legal consequences of non-compliance with or violation of Provisional Measures of Protection, provided with autonomy. In my view, the *victims* occupy, both in this context of prevention as well as in the decision on the merits (and possible reparations) of the cases, a truly central position, as subjects of International Human Rights Law and contemporary Public International Law with international legal standing.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra-Alessandri
Secretary