

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS¹
OF JULY 4, 2006**

PROVISIONAL MEASURES REGARDING COLOMBIA

**CASE OF 19 TRADESMEN
(SANDRA BELINDA MONTERO-FUENTES AND NEXT OF KIN,
SALOMÓN FLÓREZ AND NEXT OF KIN, LUIS JOSÉ PUNDOR-
QUINTERO AND NEXT OF KIN, ANA DIVA QUINTERO-QUINTERO
DE PUNDOR AND NEXT OF KIN)**

HAVING SEEN:

1. The Judgment on the merits, reparations and costs rendered by the Inter-American Court of Human Rights (hereinafter referred to as "the Court" or "the Tribunal") on July 5, 2004 in the Case of 19 Tradesmen against the State of Colombia (hereinafter, "the State" or "Colombia").
2. The Order issued by the Inter-American Court on September 3, 2004, whereby, *inter alia*, it decided to "[r]atify the Order of the President of the Court [(hereinafter, "the President")] of July 30, 2004, regarding the protection of Sandra Belinda Montero-Fuentes and her son Juan Manuel Ayala-Montero, as spelled out in Considering clause number fifteen of the [...] Order," while calling upon the State to: a) keep the necessary measures in place to protect the rights to life and humane treatment of Sandra Belinda Montero-Fuentes and her son Juan Manuel Ayala-Montero; and b) immediately adopt such measures as may be required in order to protect the rights to life and humane treatment of María Paola Casanova-Montero, a seven-year old minor and the daughter of Sandra Belinda Montero-Fuentes.
3. The brief dated April 17, 2006, whereby the *Comisión Colombiana de Juristas* (Colombian Jurists Commission) (hereinafter, "the representatives of the victims and their next of kin" or "the representatives") filed with the Inter-American Court, pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter, "the Convention" or "the American Convention") and Article 25 of the Rules of Procedure of the Court (hereinafter, "the Rules of Procedure"), a request for

¹ Judge Oliver Jackman did not take part in the deliberations on and signing of this Order, since he advised the Court that, for reasons beyond his control, he would be unable to attend the LXXI Regular Session of the Court.

provisional measures in the case of 19 Tradesmen for the purpose of having the State adopt such measures as may be necessary in order to protect the rights to life and humane treatment of Mr. Salomón Flórez and his next of kin, "particularly the transportation of [his wife,] Nubia Stella Sepúlveda," as well as of Mr. Luis José Pundor-Quintero and his next of kin and Ana Diva Quintero-Quintero de Pundor and her next of kin. The representatives stated that Mr. Salomón Flórez is the brother of Antonio Flórez, a victim in the Case of 19 Tradesmen, he testified at the public hearing on the merits and possible reparations and costs held at the seat of the Court, and he is a beneficiary of the reparations ordered by the Tribunal. The representatives further stated that the "nuclear family of Salomón Flórez [is] made up of his wife [...] and a minor child, Danilo Flórez." Moreover, they noted that Mr. Luis José Pundor-Quintero is a beneficiary of the reparations and that his nuclear family "consists of his wife, five minor children and one daughter and her common-law spouse," and that the nuclear family of Ana Diva Quintero-Pundor consists of "her husband and a step-son."

4. The arguments raised by the representatives in their request for provisional measures (*supra* Having Seen clause No. 3), which are summarized below:

a) Mr. Salomón Flórez took action before the Colombian authorities and the Inter-American Court by filing a complaint for what had happened to his brother Antonio Flórez and claiming reparations. He took part in "a commission which, a few days after the disappearance of the tradesmen, set out in search of their loved ones" and testified before the Court. In his testimony, "he provided an account of the facts" and "the events in connection with the Colombian authorities." Furthermore, he "took part in [several] actions [...] in search of the disappeared." Fifteen days after the media reported on the "amount of the compensation set for the victims' next of kin, Salomón was [...] contacted by two men who [...] let him know that: '*it was already a fact that the family had to decide how much money they were getting out of such compensation.*'" Fifteen days later, "men carrying submachine guns told Salomón that '*the family needed to pay a couple of million.*'" Since February 2006, the State, "through some of its authorities, has been making partial payment of the compensation amount ordered by the Court[. I]ndividuals who are apparently members of paramilitary groups have insisted on pressur[ing] Mr. Salomón Flórez, thus forcing him to leave his place of residence." On March 29, 2006, the representatives reported to the Ministry of Foreign Affairs, the Ministry of the Interior and Justice, and the Protection Program "the events affecting the family of Mr. Salomón Flórez and request[ed] the adoption of the necessary measures of protection." The State "has, so far, dealt with the issue of the air tickets but has not yet rendered a decision regarding the situation of Nubia Stella[,] who has thus been forced to remain in the risk area, on pain of losing her job;"

b) Mr. Luis José Pundor-Quintero decided "to leave his usual place of residence along with his family[,] to protect his life and physical integrity [...] and] those of his family," since, on April 5, 2006, "a friend told him [...] she had seen two 'ill-intending' men asking questions about him and advised him to be careful." Mr. Pundor-Quintero went to the house of his mother, Ana Diva Quintero-Quintero de Pundor, who lives with "her husband and a step-son." A few days later his mother "received a phone call from San Pablo, from Luis José's lady friend, who said that the men that were looking for him were apparently members of the *guerrilla* and '*were after his money, so you should*

all be careful." On April 7, 2006, "Ana Diva and her next of kin decided to move somewhere else "because they feared that "through [t]he people who had come from the Municipality of San Pablo hauling some 'personal belongings' and were staying at a rooming house located close to [her] resid[ence ...] they would find Luis José." On April 8, 2006, Ana Diva's stepson, who remained at their initial residence, told her that the men had been asking about their new place and José Luis' whereabouts. The men went back to the Municipality of San Pablo, but left their belongings behind at the residence they had been staying at since the previous Friday." Ana Diva Quintero-Quintero de Pundor told the representatives that she would "discuss the protection measures required with her family, as they fear acts of violence may be perpetrated against them;" and

c) the above-stated facts "regarding the threats and harassment that the aforementioned families have been put through and due to which they were forced to leave their place of usual residence entail a serious and imminent danger to their lives and physical integrity. Apparently, such danger is attributable to [...] paramilitary and guerrilla groups." "Therefore, irrespective of the source of the threats [,] the State is required to [...] provide essential measures of protection in order to prevent irreparable harm to their lives and physical integrity." These people are the next of kin of the victims in the Case of 19 Tradesmen, and some of them have testified before the Court, "which is why the State has a special duty of protection."

5. In light of the foregoing, the representatives requested that the Court call upon the State to:

a) Adopt provisional measures [... for] the benefit of [the nuclear families of Messrs. Salomón Flórez and Luis José Pundor and Ana Diva Quintero-Pundor.]

b) [...]implement the measures of protection requested on March 29[, 2006] for the benefit of the next of kin of Mr. Salomón Flórez, notably the transportation of Nubia Stella Sepúlveda, as this measure is subject to the decision of the Ministry of Education.

c) Regarding the Quintero-Pundors, in addition to such measures of protection as may be decided by the Court when ordering provisional measures, [...] call an urgent meeting to coordinate the protection measures requested for these particular cases.

6. The Order of April 28, 2006, whereby the President decided, *inter alia*: 1) to insist that the State take and keep in place such measures as may be required to protect the rights to life and humane treatment of Sandra Belinda Montero-Fuentes and her children, Juan Manuel Ayala-Montero and María Paola Casanova-Montero; 2) to extend the scope of the measures regarding the case of 19 Tradesmen and call upon the State to immediately adopt such measures as may be necessary to protect the rights to life and humane treatment of Messrs. Salomón Flórez-Contreras and Luis José Pundor-Quintero and Ana Diva Quintero-Quintero de Pundor, as well as their respective families, taking into consideration the statements set forth in Considering clause number eighteen of the [...] Order; 3) to call upon the State to report to the Inter-American Court, within a period of ten days as of the date of notice of the Order, on the measures adopted in compliance therewith; and 4) to request that, within a period of five days, the representatives advise the Court whether the persons named in Considering clause number eighteen of such Order are actually the ones requiring protection, or otherwise to state their names, if necessary.

7. The brief dated May 25, 2006, whereby the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission") submitted comments to the fifth bi-monthly report filed by the State on March 28, 2006. Basically, the Commission argued as follows:

a) as regards Montero and her family, further information is required to "perfect the protection scheme" and bring it in line with the Court's order. Accordingly, it expressed its concern "over the comments made by the beneficiaries' representatives on the inexistence of a risk-assessment report for Belinda Montero and her family by the Colombian Police Department." Accordingly, we are awaiting the comments and remarks of the parties on a potential follow-up meeting, "considering that the Colombian Police Department was required to provide a risk report to Sandra Montero". The "transportation and relocation support [...] covers the short-term security needs of the measures' beneficiaries." The State has failed to provide information on the investigation of the facts that led to such measures, and its next report is required to include "a detailed account of the investigation measures implemented and the results thus obtained;"

b) as regards the measures for the protection of Messrs. Salomón Flórez-Contreras and Luis José Pundor-Quintero and Ana Diva Quintero-Quintero de Pundor, as well as their respective families, the Commission "expects a meeting to be held between the State and their representatives regarding the measures to be adopted." The State's next report is required to include information on any measures adopted in connection with such beneficiaries; and

c) it requested that the Court "maintain the provisional measures in force and follow up on any specific action taken in order to comply with the measures ordered by the Court."

8. The note from the Secretariat of the Court (hereinafter, "the Secretariat"), dated May 26, 2006, whereby, further to the President's instructions, the Secretariat reminded the State of Colombia that May 8, 2006 marked the expiration of the deadline set for it to submit the report requested by the President through the Order of April 28, 2006 (*supra* Having Seen clause No. 6) regarding the extension of scope of the measures for the protection of the rights to life and humane treatment of Messrs. Salomón Flórez-Contreras and Luis José Pundor-Quintero and Ana Diva Quintero-Quintero de Pundor, and their respective families, and the State was thus required to submit such report in the shortest time possible.

9. The Secretariat's notes of June 19, 2006, whereby, further to the instructions of the President, it requested the State and the beneficiaries' representatives to provide, no later than June 22, 2006, the information required to be submitted as per the President's Order of April 28, 2006 (*supra* Having Seen clause No. 6), since the Court was going to assess the possibility of ratifying such order of the President in its Next Regular Session and supervising the enforcement of the measures adopted for the benefit of Sandra Belinda Montero-Fuentes and her next of kin. By means of said notes, the State was reminded that the deadline for submission of the bi-monthly report on the enforcement of the measures had expired on May 28, 2006 without such report being filed with the Secretariat.

CONSIDERING:

1. That Colombia is a State Party to the American Convention on Human Rights, under Article 1(1) of which State Parties are required 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, and that on June 21, 1985 said State recognized the jurisdiction of the Court pursuant to Article 62 of the Convention.

2. That Article 63(2) of the American Convention on Human Rights provides that “[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons,” the Court may adopt such provisional measures as it deems pertinent in matters not yet submitted to the Court.

3. That, on this issue, Article 25 of the Rules of Procedure provides that:

1. 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.

[...]

5. If the Court is not sitting, the President, in consultation with the Permanent Commission and, if possible, with the other Judges, shall call upon the government concerned to adopt such urgent measures as may be necessary to ensure the effectiveness of any provisional measures that may be ordered by the Court at its next session.

4. That this request for provisional measures was filed directly by the representatives of the victims and their next of kin in the context of a matter that is under the consideration of the Court in the stage of supervision of compliance with the judgment, and it thus conforms to the provisions of Article 25 of the Rules of Procedure.

5. That urgent and provisional measures may also be ordered at the stage of supervision of compliance with the judgment provided, however, that the information submitted to the Court reveals, *prima facie*, a situation of extreme gravity and urgency and impending irreparable damage to persons.²

6. That, in the International Law of Human Rights, provisional measures are not only precautionary to the extent that they maintain the legal *status quo*, but also and essentially they are protective in nature, as they protect human rights, insofar as they are intended to avoid irreparable damage to persons. Provided that the basic requirements of extreme gravity and urgency and prevention of irreparable damage to persons are met, provisional measures become a true preventive judicial guarantee.³

² Cf. *Case of Bámaca-Velásquez*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 20, 2003, Considering clause No. 10; *Case of Bámaca-Velásquez*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 21, 2003, Considering clause No. 10; and *Case of the Mayagna (Sumo) Awas Tingni Community*. Provisional Measures. Order of the Inter-American Court of Human Rights of September 6, 2002, Considering clause No. 9.

³ Cf. *Matter of Yare I and Yare II Capital Region Penitentiary Center (Yare Prison)*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 30, 2006, Considering clause No. 5; *Matter of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures. Order of the Inter-

7. That, in particular and as previously held by the Court, it is the State's responsibility to adopt security measures to protect all persons subject to its jurisdiction,⁴ which duty becomes even more obvious in connection with those who are involved in proceedings carried out before the bodies supervising compliance with the American Convention.⁵

8. That in paragraph 280 of the Judgment on the merits, reparations and costs of July 5, 2004, the Court ruled that the State is to specifically guarantee the life, safety and security of those who testified before the Tribunal and their families, providing them with the necessary protection from any person, taking into consideration the circumstances surrounding the instant case and the fact that most of the victims' next of kin who testified before the Tribunal and a notary public expressed their fear of retaliation.

9. That, on September 3, 2004, the Tribunal issued an Order ruling on the request for provisional measures submitted by the Inter-American Commission in the Case of 19 Tradesmen. Through such Order, the Court ratified the July 30, 2004 Order of the President of the Court and called upon Colombia to:

- a) keep the necessary measures in place to protect the rights to life and humane treatment of Sandra Belinda Montero-Fuentes and her son Juan Manuel Ayala-Montero; and
- b) immediately adopt such measures as may be required in order to protect the rights to life and humane treatment of María Paola Casanova-Montero, the 7-year old daughter of Sandra Belinda Montero-Fuentes.

10. That on April 21, 2004, during his testimony before the Court at the public hearing on the merits and possible reparations and costs in this case, witness Salomón Flórez-Contreras, the brother of victim Antonio Flórez-Contreras, expressed his fears over testifying before the Tribunal.

11. That Mr. Luis José Pundor-Quintero and Ana Diva Quintero-Quintero de Pundor are, respectively, the brother and mother of victim Israel Pundor-Quintero.

12. That through the Judgment of July 5, 2004, when ordering reparations for the proven violations, the Court ruled, *inter alia*, that the State was required to pay

American Court of Human Rights of February 7, 2006, Considering clause No. 5; and *Matter of the Peace Community of San José de Apartadó*. Order of the Inter-American Court of Human Rights of February 2, 2006, Considering clause No. 5.

⁴ Cf. *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 9, 2006, Considering clause No. 9; *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 2, 2006, Considering clause No. 7; and *Matter of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 2, 2006, Considering clause No. 6.

⁵ Cf. *Matter of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 7, 2006, Considering clause No. 4; *Matter of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 2, 2006, 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.

certain compensatory amounts to Messrs. Salomón Flórez-Contreras and Luis José Pundor-Quintero and Ana Diva Quintero-Quintero de Pundor.

13. That, upon examination of the facts and circumstances that were the basis for the Order of the President dated April 28, 2005, extending the scope of the measures to three beneficiaries and their families (*supra* Having Seen clause No. 6), and the averments of the representatives (*supra* Having Seen clauses No. 3 and 4), the Court finds it appropriate to ratify the President's decision on the grounds that the information submitted does reveal, *prima facie*, that Messrs. Salomón Flórez-Contreras and Luis José Pundor-Quintero and Ana Diva Quintero-Quintero de Pundor, as well as their respective families, are in a situation of extreme gravity and urgency as their lives and personal integrity have been threatened and are at serious risk. The application of the *prima facie* standard in a given case and the use of presumptions on account of the need to secure protection have led the President and the Court to order measures on several occasions in the past.⁶

14. That, since the State has failed to submit the report required under operative paragraph number six of the aforementioned Order of the President extending the scope of the measures, and the representatives have also failed to submit the information requested under operative paragraph number three thereof (*supra* Having Seen clauses No. 6, 8 and 9), the Court does not have any information regarding the measures that Colombia may have adopted to comply with the President's Order, nor does it have up-to-date information on the current situation of the beneficiaries.

15. That, given the legal nature of urgent measures and provisional measures, which are aimed at preventing irreparable damage to persons in situations of extreme gravity and urgency, the Court would like to insist on the particular importance of the information provided by the State, as well as the information that the Commission and the beneficiaries' representatives may submit on the subject. In this regard, as the President was forced to insist on the need for the State and the beneficiaries' representatives to submit the required information regarding both the scope extension and the provisional measures ordered for the benefit of Sandra Belinda Montero and her family (*supra* Having Seen clauses No. 8 and 9), the Court finds it necessary to note that such information is essential to find out about the current situation of the beneficiaries and, as the case may be, to assess the implementation of measures by the State.

16. That under Article 63(2) of the Convention, the adoption of such provisional measures as may be ordered by this Tribunal is mandatory for the State, since the fundamental principle of the law on international responsibility of the State, as supported by international case law, mandates that States should comply with their contractual obligations in good faith (*pacta sunt servanda*).

THEREFORE:

⁶ Cf. *Matter of Yare I and Yare II Capital Region Penitentiary Center (Yare Prison)*. Provisional Measures. Order of the Inter-American Court of Human rights of March 30, 2006, Considering clause No. 20; *Matter of Monagas Judicial Confinement Center ("La Pica")*. Urgent Measures. Order of the President of the Inter-American Court of Human Rights of January 13, 2006, Considering clause No. 16; and *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 30, 2005, Considering clause No. 22.

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES:

1. To ratify the Order of the President of the Inter-American Court of Human Rights of April 28, 2006 in its entirety and, accordingly, to call upon the State of Colombia to keep in place any and all such measures as it may have adopted and to immediately adopt such further measures as may be required to protect the rights to life and humane treatment of Messrs. Salomón Flórez-Contreras and Luis José Pundor-Quintero and Ana Diva Quintero-Quintero de Pundor, and their respective families.
2. To call upon the State, once again, to adopt and keep in place such measures as may be required to protect the rights to life and humane treatment of Sandra Belinda Montero-Fuentes and their children, Juan Manuel Ayala-Montero and María Paola Casanova-Montero.
3. To call upon the State to investigate the facts that led to the adoption of these provisional measures and, if appropriate, to identify and adequately punish the perpetrators.
4. To call upon the State of Colombia to advise the Inter-American Court of Human Rights of any measures adopted in compliance with this Order, pursuant to Considering clauses number fourteen and fifteen of this Order, within a period of fifteen days as from the date of notice hereof.
5. To call upon the State of Colombia to continue to allow the beneficiaries of these measures or their representatives to be involved in the planning and implementation thereof and, in general, to keep them informed on the progress made in their enforcement.
6. To call upon the State of Colombia to continue to report to the Inter-American Court of Human Rights, every two months, on compliance with the measures adopted, and to call upon the measures' beneficiaries or their representatives to submit their comments to the State's bimonthly reports within four weeks of the date of filing of such reports, and to request the Inter-American Commission on Human Rights to submit its comments to such State reports within six weeks of their filing.
7. To request that the Secretariat of the Court give notice of this Order to the Inter-American Commission on Human Rights, the representatives of the measures' beneficiaries, and the State.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra-Alessandri
Secretary