

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 29, 2006***

PROVISIONAL MEASURES REGARDING THE REPUBLIC OF COLOMBIA

MATTER OF GIRALDO-CARDONA

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 28, 1996, whereby he decided, *inter alia*:

1. To request the State of Colombia to adopt forthwith such measures as may be necessary to safeguard and protect the life and physical integrity of Sister Noemy Palencia, Islena Rey-Rodríguez, Gonzalo Zárate, Mariela de Giraldo and her two minor daughters Sara and Natalia Giraldo; and to prevent irreparable damage thereto, in strict compliance with the obligation to respect and guarantee human rights under Article 1(1) of the American Convention on Human Rights [;]

2. To request the State of Colombia to adopt forthwith such measures as may be necessary to guarantee that the above-mentioned persons may continue living in their habitual place of residence and return to their home, ensuring them that they will not be persecuted or threatened by government officials or private individuals [; and]

3. To request the State of Colombia to investigate the acts denounced committed against the members of the *Comité Cívico por los Derechos Humanos del Meta* (Meta Department Human Rights Civic Committee), in order to punish those responsible for such acts and, in particular, for the murder of Josué Giraldo-Cardona.

[...]

2. The Order of the Inter-American Court of February 5, 1997, whereby it decided, *inter alia*:

1. To ratify the Order of the President of October 28, 1996 [; and]

2. To request the State of Colombia:

a. To maintain the provisional measures adopted in behalf of Sister Noemy Palencia, Islena Rey-Rodríguez, Gonzalo Zárate, Mariela de Giraldo and her two minor daughters Sara and Natalia Giraldo [; and]

b. To adopt, as an essential part of the duty of protection, effective measures to investigate and, where appropriate, punish those responsible for the facts.

[...]

3. The Order of the Inter-American Court of April 16, 1997, whereby it decided, *inter alia*, "[...] to ratify its Order of February 5, 1997."

* Judge Oliver Jackman informed the Court that, for reasons beyond his will, he would not be able to attend the LXXIII Regular Session, whereby he did not take part in the deliberation and passing of this Order.

4. The Order of the Inter-American Court of June 19, 1998, whereby it decided, *inter alia*:

1. To lift and discontinue the provisional measures ordered by the Court in its Order of February 5, 1997, in behalf of Gonzalo Zárate [;]
2. To request the State of Colombia to adopt such measures as may be necessary to protect the life and physical integrity of Sister Noemy Palencia as soon as she returns to Meta Department [;]
3. To maintain the provisional measures adopted in behalf of Islena Rey-Rodríguez, Mariela de Giraldo and her two minor daughters Sara and Natalia Giraldo [; and]
4. To request the State, as an essential part of the duty of protection, to adopt effective measures to investigate and, where appropriate, punish those responsible for the facts which gave rise to the adoption of the provisional measures.

[...]

5. The Order of the Inter-American Court of November 27, 1998, whereby it decided:

1. To request the State of Colombia to adopt such measures as may be necessary to protect the life and physical integrity of Sister Noemy Palencia as soon as she returns to Meta Department [;]
2. To maintain the provisional measures adopted in behalf of Islena Rey-Rodríguez, Mariela de Giraldo and her two minor daughters Sara and Natalia Giraldo [;]
3. To request the State of Colombia to communicate with the beneficiaries of the provisional measures in order to afford them due, serious, final, and reliable protection and to inform, in its next report, about the results of such steps [; and]
4. To request the State of Colombia to include in its next report, as an essential part of the duty of protection, information about the progress of the investigation into those responsible for the facts which gave rise to the adoption of the provisional measures, and about the sanctions imposed to those responsible for such facts and, if possible, to forward copies of the pertinent proceedings.

6. The Order of the Inter-American Court of September 30, 1999, whereby it decided, *inter alia*:

1. To request the State of Colombia to maintain such measures as may be necessary to protect the life and physical integrity of Sister Noemy Palencia (as soon as she returns to Meta Department), Islena Rey, and Mariela de Giraldo and her two minor daughters, Sara and Natalia Giraldo, in behalf of whom the Inter-American Court of Human Rights ordered the adoption of provisional measures in its Orders of October 28, 1996; February 5, 1997; and June 19 and November 27, 1998 [;]
2. To request the State of Colombia to conduct an investigation into the facts denounced which gave rise to these measures in order to identify those responsible for such facts and punish them [;]
3. To request the State of Colombia to inform about the alternative mechanisms which shall be adopted as a consequence of the facts described in the briefs filed by the Commission on September 3 and 15, 1999 and in the briefs filed by the State on the seventeenth day of the same month and year, to effectively comply with the provisional measures ordered by the Inter-American Court of Human Rights, as well as to inform about the steps taken with a view to reopening the *Comité Cívico por los Derechos Humanos del Meta* (Meta Department Human Rights Civic Committee) [; and]
4. To request the State of Colombia to continue allowing the petitioners to take part in the planning and implementation of the measures referred to in the foregoing paragraph and, in general, to keep them informed about the progress regarding the compliance with the measures ordered by the Inter-American Court of Human Rights.

[...]

7. The Order of the Inter-American Court of December 3, 2001, whereby it decided, *inter alia*:

1. To request the State and the Inter-American Court to cease forwarding information about Gonzalo Zárate-Triana, in behalf of whom the Inter-American Court of Human Rights ordered provisional measures as from February 5, 1997, which were lifted on June 19, 1998.

[...]

8. The communications forwarded by the State of Colombia (hereinafter "the State" or "Colombia") on December 6, 2001; February 7, 2002; May 2, 2002; July 11, 2002; September 16, 2002; November 19, 2002; January 28, 2003; March 31, 2003; July 3, 2003; September 16, 2003; December 1, 2003; March 26, 2004; September 23, 2004; January 10, 2005; March 28, 2005; March 31, 2005; August 16, 2005; October 11, 2005; January 3, 2006; and August 11, 2006; whereby it informed, *inter alia*:

a) Regarding the measures adopted to protect the life and physical integrity of Sister Noemy Palencia as soon as she returns to Meta Department, of Islaena Rey, and of Mariela de Giraldo and her two minor daughters, Sara and Natalia Giraldo, that:

i. Ms. Rey is currently afforded personal protection measures, the continuance of which has been guaranteed through the extension of the contracts for services and permanent control by the *Coordinación Operativa del Departamento Administrativo de Seguridad* (Administrative Security Department Operative Coordination) (hereinafter "DAS"), Meta Department Regional Office. This personal protection plan consists of: three escorts, two of whom are hired while the other is a DAS agent; a lorry for their transport; two guns, three bulletproof vests, a sub-machine gun, and a pistol for the escort guards; a Motorola radio and an Avantel as communications equipment. Furthermore, the National Police offers a round-the-clock security service in her house, which is performed by three policemen. Ms. Rey has not filed any observations regarding the protection measures afforded thereto by the National Police. Furthermore, patrolling around her house and place of work, *Electrificadora of Meta Department*, is conducted in order to monitor the security service, and there is permanent communication with the national Police Human Rights Coordination. The escorts submit a report every fifteen days, wherein they refer to her travels both in and out of the city and report the news on duty so that the protection measures afforded can be fully and effectively controlled; under no circumstance do the above-mentioned escorts seek to violate the intimacy of the beneficiaries;

ii. several incidents were reported regarding the aforesaid protection measures. Among others, on August 28, 2001 two persons prowling around Ms. Rey's house on a motorbike were detected and intercepted, and a gun was seized therefrom; on June 30, 2002, "her escorts were seen talking with two armed men," who allegedly were members of the illegal paramilitary group known as *Autodefensas*; late in 2004 Ms. Rey noted that two persons were looking at her oddly in Cofrem park; that same year a similar situation which turned out to be a mere traffic accident was reported while she was going to

Acacías municipal district, none of these events posing any risk to her physical integrity; and in March, 2005 Ms. Rey received an envelope containing a blackmail from the above *Autodefensas*, which was forwarded to the Attorney General of the Republic;

iii. escorts Luis Adolfo Cárdenas-Barrera, Nemesio Ruiz, and Miguel Hernando Lozano-Alvarado were replaced by other escorts as some problems arose and as they were not very empathic with the beneficiary. The last replacement was made on September 12, 2005. Regarding the complaints filed by the representatives over the sporadic absences of the staff assigned to the above protection plan, it pointed out that the beneficiary is never alone as she is always escorted by two guards, if the third escort has some formalities to go through;

iv. regarding the alleged difficulties with the supply of fuel necessary to run the vehicle, the State argued that “[it] has never been denied;”

v. though the beneficiary knows her rights and duties regarding the protection measures afforded thereto, she has repeatedly used it in an irregular manner, as when carrying other people or materials in the vehicle assigned for her safety, or when allowing her minor child to travel in the vehicle at all times or traveling without being escorted by the guards assigned thereto. Furthermore, she makes dialogue difficult with her escorts, which includes alleged verbal aggressions against them; she’s carrying out a campaign to disrepute the DAS, and is unwilling to undergo a reassessment by the DAS of the degree of risk and threats she faces. Therefore, it is not clear whether it is necessary to maintain the protection measures currently afforded to Ms. Rey. Notwithstanding, the continuance of the aforesaid protection service is guaranteed, as well as the permanent supervision, control, and monitoring thereof;

vi. regarding the request filed by Ms. Islena Rey so that the protection plan be managed from Bogota, the DAS informed that it is incumbent upon Regional Directors to supervise and manage the operation of protection programs, whereby it is not feasible to manage the protection plan afforded thereto or appoint escorts from the city of Bogota;

vii. regarding the investigation started by former escort Luis Adolfo Cárdenas-Barrera against Islena Rey due to alleged irregularities in the use of such protection plan, a restraining order was issued on October 26, 2004 for lack of merit to start the criminal proceedings. Furthermore, no appeal was filed, whereby on March 9, 2005 the foregoing order became final and the proceedings were closed. Regarding the manner in which Ms. Rey was served notice thereof, the State pointed out that a communication was delivered thereto through the management of *Electrificadora del Meta*, where she works, as “the State Attorney did not know her address;”

viii. regarding the other beneficiaries, no protection measures have been requested by Mariela de Giraldo and her daughters. Both the DAS and the Police Department have offered to afford personal and residential escort services to Mariela de Giraldo and her daughters, which was rejected. Notwithstanding, an assessment of the risk they

face was carried out and recommendations were made; visits are made around her house which have been reinforced by a round-the-clock patrol which is stationed near her house; and direct telephone lines communicating with the Human Rights Office and the Police Headquarters have been provided thereto;

ix. according to the information supplied in January 2006, no further threats or acts of harassment had been reported by Islena Rey, Mariela de Giraldo, Sara Giraldo, or Natalia Giraldo as claimants or victims neither to the *Dirección Seccional de Fiscalías* of Villavicencio (Villavicencio Regional Office of Public Prosecutors' Offices) nor to the Office of the Public Prosecutor thereunder; and

x. on January 21, 2002 "a professional survivor pension was granted to Mariela [de Giraldo] and her daughters Sara [...] and Natalia Giraldo [...]."

b) Regarding the investigation into the facts denounced which gave rise to the adoption of these measures in order to identify those responsible for such acts and, where appropriate, punish them, that:

i. regarding the murder of Josué Giraldo-Cardona, committed on October 13, 1996, in accordance with the information provided in October 2005, the investigation proceedings which were started before the National Unit of Human Rights and International Humanitarian Law under number 140 were at the preliminary stage and evidence was being collected in order to elucidate the facts and identify the perpetrators or accessories before or after the facts. The names of the alleged physical perpetrators of the murder of Josué Giraldo were established, but instigators could not be identified as the former were violently killed the year following the murder of Mr. Giraldo. The investigation proceedings into the alleged instigators, started under No. 008-000043/97, in accordance with the information provided by the Office of the Attorney General "concluded with the acquittal of National Army Colonels Pedro Ignacio Hernández-Pulido and Ricardo Morales-Piedrahita." Regarding the application filed by Álvaro de Jesús Giraldo-Herrera *et al.* for the death of Josué Giraldo-Cardona, against the State, the Ministry of Defense, the National Army, the National Police, the DAS, and the Ministry of Internal Affairs and Security of Meta Department, the *Tribunal Administrativo del Meta* (Meta Administrative Court) rendered judgment in the first instance on August 17, 2005, whereby the State of Colombia was acquitted;

ii. regarding the murder of Pedro Malagón, deputy to Meta Department Assembly by *Unión Patriótica* political party, and his daughter Elda Milena Malagón, in accordance with the information provided in October 2005, the investigation proceedings started before the National Unit of Human Rights and International Humanitarian Law under No. 163 were at the preliminary stage and evidence was being collected in order to elucidate the facts and identify the perpetrators and accomplices before and after the facts. The names of the alleged physical perpetrators of the murder, who were alleged members of a "gang of hired gunmen which operated in Meta Department, were established. It was further established that these individuals were killed in 1997." The investigation proceedings into the alleged instigators, started under No. 008-000043/97, in

accordance with the information provided by the Office of the Attorney General "concluded with the acquittal of National Army Colonels Pedro Ignacio Hernández-Pulido and Ricardo Morales-Piedrahita;"

iii. regarding the double murder of Humberto and Gonzalo Zárate-Triana brothers, in accordance with the information provided in September 2002, the National Unit of Human Rights and International Humanitarian Law took up the investigation proceedings started under No. 110, by virtue of which evidence was being collected in order to elucidate the facts and identify the physical perpetrators;

iv. regarding the alleged irregularities in the judicial inspection of the corpses of the Zárate-Triana brothers, as well as concerning the seizure of documents and the search of their home, a preliminary investigation was conducted in order to determine whether the authorities acted in an intimidating manner towards the victim's next of kin and whether in the proceeding of the pertinent criminal investigation there have been disciplinary irregularities. On November 14, 2003 the *Sala Jurisdiccional Disciplinaria* (Disciplinary Judicial Chamber) of the *Consejo Seccional de la Judicatura del Meta* (Regional Council of Meta Department Judges) decided that "no merits have been proven to proceed with the investigation started against the official being investigated [, Attorney Janeth Espinosa-Delgado, in her capacity as Sixteenth Prosecutor Commissioned before the Villavicencio Criminal Circuit Courts,] whereby it was decid[ed] that the investigation proceedings be closed" and that no disciplinary proceedings be started against said official;

v. regarding the threats against the beneficiary Islena Rey, the following investigations were conducted:

(a) proceedings started under No. 53694 against Víctor Harrinthon-Alvarado-Rivera and Elver Alexander Penagos-Muñoz for illegally bearing weapons, wherein judgment was rendered on July 7, 2003, acquitting Mr. Alvarado and sentencing Mr. Penagos to twelve months' imprisonment and additionally imposing thereto the deprivation of his political rights and the disqualification to hold public office. On August 13, 2003 the case was forwarded to the *Juzgado de Ejecución de Penas y Medidas* (Enforcement Court);

(b) proceedings started under No. 85993 regarding the alleged threats against the life of Islena Rey, which in 2003 were at the preliminary stage, during which evidence was being collected in order to elucidate the facts and identify the perpetrators or accomplices before of after the facts;

(c) proceedings started under No. 21458 regarding the alleged threats against the life of Islena Rey, wherein a restraining order was issued in September 2000, and which became final, whereby the proceedings were closed on October 9, 2000; and

(d) proceedings started under No. 14576 filed regarding the alleged threats against the life of Islena Rey, in which a

restraining order was issued on June 6, 2002, whereby the proceedings were closed. Later on, the investigation proceedings were reopened under No. 2141, wherein a restraining order was also issued, which became final on January 28, 2005.

vi. regarding the investigation into the murder of Samuel Vacca, a restraining order was issued on October 28, 2002;

vii. regarding proceedings started under No. 1451 by Islena Rey against some members of the National Army for the alleged torture suffered by Guillermo Parra and Efrén Ibáñez and by a minor whose identity is unknown, a restraining order was issued on May 3, 2005 as a result of the non-appearance of the alleged victims and the failure to prove the alleged crime;

viii. the proceedings started under No. 21456 regarding the simple kidnapping of Alberto Barbosa-Torres were discontinued and closed;

ix. the disciplinary investigation started against escort Luis Adolfo Cárdenas-Barrera, from Meta Department DAS Office, was closed by virtue of a court order issued on October 29, 2003, on the grounds that pursuant to the applicable law his acts cannot be classified as misconduct; and

x. in the investigation proceedings there was no "*partie civil*" and no legal remedies were sought regarding the decisions adopted by the body in charge of the investigation.

c) Regarding the steps taken with a view to reopening the *Comité Cívico por los Derechos Humanos del Meta* (Meta Department Human Rights Civic Committee), that:

i. in 2002 a number of Security Councils were convened in which Islena Rey took part in order to consider the possibility of reopening the *Comité Cívico por los Derechos Humanos del Meta* (Meta Department Human Rights Civic Committee); in 2003 it was agreed that a meeting *in loco* was to be held in which the main authorities of Meta Department would take part, as well as the bodies involved in the implementation and monitoring of the provisional measures; and in March 2005 a visit to the area was proposed with the purpose of "carrying out pedagogical activities concerning human rights and raise public awareness so as to create a favorable environment and the necessary dynamics prior to setting up its offices," activities in which Islena Rey would participate; and

ii. since 2004 twenty municipal Committees on Human Rights and International Humanitarian Law have been created in Meta Department, within the framework of the Department Action Plan, in coordination with the Development Plan known as "*Visión Sin Límites.*"

d) Regarding the participation of the petitioners in the planning and implementation of the provisional measures, that:

i. meetings have been held with Islena Rey, *inter alia*, in December 2002; on February 10, 2003; September 23, 2003; and January 27,

2005; concerning the implementation of the protection measures afforded thereto;

ii. other meetings have been convened, but neither the beneficiaries nor their representatives have attended them; and

iii. on July 22, 2005 a meeting was held in Meta Internal Affairs and Security Department in order to discuss and take such steps as may be necessary regarding the provisional measures. Since Ms. Rey has not informed the regional authorities about her concerns regarding her safety nor does she allow a risk reassessment to be carried out every six months, at the above-mentioned meeting it was agreed that every body should submit a report describing the response given to Ms. Rey's requests and motions.

9. The note of the Secretariat of the Court (hereinafter "the Secretariat") CDH-S/326 of March 29, 2004, whereby it informed the representatives that:

"[...] pursuant to the Order of the Court of November 25, 2003, whereby, *inter alia*, Article 25 of the Court's Rules of Procedure was amended, the beneficiaries of the provisional measures 'may submit their observations on the report of the State directly to the Court' [in the instant case within a term of four weeks]."

10. The communications submitted by the representatives of the beneficiaries on April 29, 2004; June 24, 2004; January 12, 2005; June 13, 2005; October 10, 2005; November 4, 2005; April 17, 2006; and September 26 and 27, 2006; whereby they pointed out, *inter alia*:

a) Regarding the measures adopted to protect the life and physical integrity of Sister Noemy Palencia, as soon as she returns to Meta Department, of Islena Rey, and Mariela de Giraldo and her two minor daughters, Sara and Natalia Giraldo, that:

i. the protection measures afforded to Ms. Rey are not being properly implemented and deficiencies and difficulties have systematically arisen. Therefore, the State has not afforded due protection;

ii. Ms. Rey has had serious problems with the behavior, attitudes, and performance of her escorts. Furthermore, the complaints duly made by Ms. Rey have not been given proper attention, which has affected the proper implementation of the protection measures;

iii. the vehicle allocated to the protection plan afforded to Ms. Rey is in poor operating and mechanical conditions, whereby it had to be taken to the repair shop. During the period when such vehicle was in the repair shop, the DAS did not allocate any other vehicle to facilitate the implementation of the protection measures, which put the beneficiary in an evident state of vulnerability. The representatives have filed a request before the Ministry of the Interior and Justice so that under the Protection Program the above-mentioned vehicle may be replaced by another one in good operating conditions. The failure to allocate the necessary resources to allow Islena Rey to travel safely in order to carry out her activities as a defender of human rights, such as vouchers to get fuel for the vehicle and/or a vehicle in good operating conditions, puts the efficacy of the protection measures at risk;

iv. the communication devices allocated under the protection plan are not working properly;

v. regarding the alleged failure of Ms. Rey to comply with her duties, particularly, the transfer of her daughter in such vehicle, “[t]he protection plan cannot be understood as an additional mechanism of aggression and restriction to those who are under the cover thereof.” [T]he Colombian authorities should [...] create the necessary conditions to make this service compatible with the habitual activities of the above-mentioned persons rather than subject them to further restrictions;”

vi. the Government uses derogatory and defamatory language to refer to Ms. Rey, particularly to her alleged “discredit campaign” against the DAS and her definition as an “enemy of the State,” which is far from being true and adds to the situation of risk and latent threats she is subject to. Ms. Rey is not carrying out a campaign to discredit the DAS or the State; rather, she’s demanding the compliance with the protection measures the State must afford thereto;

vii. regarding the criminal investigation started against Ms. Rey as a result of the application filed by her former escort, Luis Adolfo Cárdenas-Barrera, on June 2, 2004 Ms. Rey made an appearance before the Office of the Public Prosecutor, during which she was questioned about the reason why she had been afforded protection measures and who had ordered such measures, as well as about her activities as a defender of human rights and who had awarded her such title or position. Such issues seem to have no bearing whatsoever on an investigation into alleged embezzlement. In this regard, her representatives pointed out that they “seriously fear that such investigation turns into judicial persecutions which distract the attention off the safety situation of Islena Rey, as it has happened with other human rights activists in Colombia.” Furthermore, Ms. Rey argued that “it is not true that the Office of the Attorney General of the Republic did not know where to find her in order to serve notice of the decision upon her [...]”;”

viii. Islena Rey was summoned to appear at a settlement hearing set for February 3, 2006, within the framework of another investigation started against her as a result of the application filed by Miguel Hernando Lozano-Alvarado, who was also a former escort of Ms. Rey. The representatives pointed out that “[t]his type of facts become acts of harassment and persecution against her, which lead her either to be confronted with the institution which is responsible for her protection or waive such protection measures so as to avoid further problems;” and

ix. they do not see the bearing of the statements contained in the reports of the State concerning the Action Plan known as “*Visión sin Límites*” on the compliance with the protection measures afforded to Ms. Rey.

b) Regarding the investigation into the facts denounced which gave rise to the adoption of these measures in order to identify those responsible for such acts and, where appropriate, punish them, that:

i. regarding the investigation into the murder of Mr. Malagón and Mr. Giraldo, “[t]he State of Colombia has not submitted to the Court serious arguments which show that it is unable to investigate into these facts and elucidate them. [...] It is obvious that the State of Colombia has not undertaken the investigations in a serious manner and as a duty of the State to elucidate the facts.” Since the adoption of provisional measures was ordered in October 1996, the State has repeatedly submitted the same information, pointing out that the investigation was at the preliminary stage and that evidence was being collected. Therefore, they consider that the State must inform about the obstacles it has encountered and indicate the strategy designed to cause said investigations to progress significantly;

ii. regarding the investigations into the threats against Ms. Rey, the lack of response concerning the elucidation of the facts which gave rise to the adoption of the provisional measures is to be remarked. Such investigations have led neither to the elucidation of any of the threats or acts of harassment, nor to the identification, trial, and punishment of those responsible for such acts. Furthermore, the State of Colombia has merely pointed out that the investigation proceedings were closed, without describing or explaining the steps that were taken so that such investigations were conducive to the compliance with the duty to prevent threats. The fact that there was no “*partie civile*” cannot be used as an excuse to for the lack of progress in the investigations. The proceedings should be reopened and an investigative line should be designed which allows identifying the source of the threats and addressing the source of risk to Ms. Rey; and

iii. regarding the disciplinary investigation started against escort Luis Adolfo Cárdenas-Barrera, Ms. Rey completely disagrees with the decision to close the proceedings, as it was not taken on the grounds of the events which actually occurred.

c) Regarding the steps taken with a view to reopening the *Comité Cívico por los Derechos Humanos del Meta* (Meta Department Human Rights Civic Committee), that:

i. the commitment taken on by the Government to hold a meeting with the local authorities has not been met to date;

ii. the State must inform about “the relation between the Action Plan ‘*Visión sin Límites*’ and the compliance with the protection measure referred to the reopening of the *Comité Cívico por los Derechos Humanos del Meta* (Meta Department Human Rights Civic Committee) [...]” and

iii. the State must “start and conclude such actions as may be necessary to seek the reopening of the *Comité Cívico por los Derechos Humanos del Meta* (Meta Department Human Rights Civic Committee),” a measure which will lead to reestablishing the conditions for the effective guarantee of the defense of human rights, as well as “develop actions so that Islena Rey, the only member of the *Comité por los Derechos Humanos del Meta* (Meta Department Human Rights Civic Committee) who still lives in Villavicencio, may reassume her activities at the non-government organization.”

d) Regarding the participation of the petitioners in the planning and implementation of the provisional measures, that:

i. the last meeting aimed at monitoring the implementation of the provisional measures was held on January 27, 2005, that is, over a year ago, and though the State is aware of the various difficulties that have arisen, it has not convened any further such meetings;

ii. the monitoring of the compliance with the measures has not been seriously arranged with the Government. Though the dates for such meetings to be held was set, they are not taken into account and when the date comes no meeting is called; and

iii. it is necessary that the State seeks a mechanism or a periodic and formal procedure to monitor the implementation of the provisional measures so that the measures aimed at complying with the protection ordered are coordinated, planned, and implemented.

11. The communications submitted by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") on February 16, 2002; September 4, 2002; November 18, 2002; January 10, 2003; May 20, 2003; June 6, 2003; September 8, 2003; October 31, 2003; January 21, 2004; November 11, 2004; May 24, 2005; September 29, 2005; December 27, 2005; April 6, 2006; and October 6, 2006; whereby it stated, *inter alia*, that:

a) Regarding the measures adopted to protect the life and physical integrity of Sister Noemy Palencia, as soon as she returns to Meta Department, of Islena Rey, and of Mariela de Giraldo and her two minor daughters, Sara and Natalia Giraldo, that:

i. there is no controversy as to the fact that protection measures have been adopted in behalf of Ms. Rey, but from the observations submitted by the beneficiaries it can be inferred that difficulties have arisen with the implementation thereof, particularly regarding the escorts. The conflicts and differences that have arisen must be solved in good faith, through decisions adopted at the joint meetings to be held in order to plan and implement the measures;

ii. Ms. Rey has communicated with several authorities to inform about the problems arisen regarding the protection service, specifically about the resources necessary, the necessary repairs and servicing of the vehicle, which is in poor operating conditions, and the payment of salaries to the escorts. It took the State over a year to replace escort Luis Adolfo Cárdenas-Barrera due to the irregularities reported on his performance on duty, his lack of professionalism, and his absences, all of which had a negative impact on the safety of the person to whom protection is afforded. The "negligence concerning the person who is under the protection program has put her in a state of defenselessness and serious risk for her health and physical integrity;"

iii. by September 2002 further acts of harassment had occurred against Islena Rey and the implementation of the protection measures had been hampered, whereby her life was, at least at the time, at risk and in imminent danger;

iv. Islena Rey is the only beneficiary of the measures ordered by the Court who at present is afforded protection; and

v. on January 21, 2002, "after almost two years of starting the pertinent steps, a professional survivor pension was finally granted to Ms. Giraldo and her daughters Sara Jimena and Natalia Giraldo.

b) Regarding the investigation into the facts denounced which gave rise to the adoption of these measures in order to identify those responsible for such acts and, where appropriate, punish them, that:

i. regarding the investigations into the murder of Mr. Giraldo-Cardona, the State has submitted the same information for several years, informing that it is at the preliminary stage. The duty to investigate must be the object of a global and clear assessment regarding the outcome expected from the adoption of provisional measures, namely, the elimination of the risk of irreparable damage, by showing that the risk factors have been identified and the threat they posed, eliminated. The repeated arguments submitted by the State concerning the future progress of the investigations is not satisfactory;

ii. no substantial progress has been made in the investigation proceedings regarding the murder of the Zárate-Triana brothers;

iii. the investigation proceedings started against Víctor Harrinthon-Alvarado-Rivera and Elver Alexander Penagos-Muñoz for illegally bearing weapons, as they were detected and intercepted while prowling on a motorbike around Ms. Rey's house, are insufficient from the point of view of the protection and prevention concerning the safety of Islena Rey, as no relation has been established or inquiry conducted regarding the acts of harassment against Ms. Rey; and

iv. the restraining orders issued in the investigation proceedings regarding the threats and attacks against the beneficiary Islena Rey, as well as the failure to reopen such investigation proceedings are a cause for concern. Only through an effective investigation can the elimination of the risk of irreparable damage underlying the order for provisional measures to be adopted be guaranteed.

c) Regarding the steps taken with a view to reopening the *Comité Cívico por los Derechos Humanos del Meta* (Meta Department Human Rights Civic Committee), that:

i. it considered the joint initiative to visit the city of Villavicencio and hold a meeting with the participation of the local authorities to be a positive one;

ii. the State must make clear the bearing of the local plan proposed by the regional authorities on the obligation of the State to enable the reopening of the *Comité Cívico por los Derechos Humanos del Meta* (Meta Department Human Rights Civic Committee); and

iii. in order to reopen the above-mentioned Committee detailed information is required which shows clearly the local authorities'

willingness and the policies aimed at dealing with the paramilitary groups which operate in the region. The reopening of such Committee does not depend on Ms. Rey's wishes.

d) As to the participation of the petitioners in the planning and implementation of the measures, since January 27, 2005 no coordination and negotiations meetings have been held between the beneficiaries and the State. It is of the utmost importance to hold coordination and negotiations meetings where differences can be reconciled and resolved through a direct and genuine discussion between the parties, for the sake of a better implementation of the protection measures.

CONSIDERING:

1. That Colombia has been a State Member to the Inter-American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since July 31, 1973, and that pursuant to Article 62 thereof, it recognized the contentious jurisdiction of the Court on June 21, 1985.

2. That Article 63(2) of the American Convention 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. Regarding to a case not yet submitted to the Court, it may act at the request of the Commission."

3. That pursuant to Article 25 of the Court's Rules of Procedure (hereinafter "the Rules"),

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 [; and]

[...]

6. [t]he beneficiaries of the provisional or urgent measures ordered by the President may submit their observations on the report of the State directly to the Court. The Inter-American Commission on Human Rights must submit its observations on the report of the State and on the observations filed by the beneficiaries of the measures or the representatives thereof.

4. That Article 1(1) of the Convention enshrines the duty of the States Parties to ensure to all persons subject to their jurisdiction the free and full exercise of the rights and freedoms protected by such treaty.

5. That under Human Rights International Law provisional measures are not only precautionary in that they preserve a legal status, but essentially protective for they protect Human Rights, as they seek to prevent irreparable damage to persons. These measures are applied as long as the prerequisites of extreme gravity and urgency and the prevention of irreparable damage to persons are met. Thus, provisional measures become a true preventive¹ jurisdictional guarantee.

¹ Cf. *Case of the Plan de Sánchez Massacre. In favor of the members of the Equipo de estudios comunitarios y acción psicosocial (Community Studies and Psychological Action Team) (ECAP). Provisional Measures. Order of the President of the Inter-American Court of Human Rights of October 20, 2006, Considering clause No. 6; Case of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo, Brazil. Provisional Measures. Order of the Inter-American Court of Human Rights of September 30, 2006, Considering clause No. 5; and Matter of Gloria Giralte de García-*

6. That the case which gave rise to the adoption of these provisional measures is not being heard by the Court regarding the merits thereof and that the adoption of provisional measures does not imply a decision on the merits of any controversy which may exist between the beneficiaries and the State. In adopting provisional measures, the Court is only exercising its powers pursuant to the Convention, in cases of extreme gravity and urgency which require the adoption of protection measures in order to prevent irreparable damage to persons.²

7. That provisional measures are of an exceptional nature, are ordered according to the need of protection, and, once ordered, must be maintained as long as the Court considers that the prerequisites of extreme gravity and urgency and the need to prevent irreparable damage to the rights of the persons thereby protected³ still persist.

8. That pursuant to the provision set forth in Article 63(2) of the Convention, the adoption of provisional measures which have been ordered by the Court is binding upon the State, as the fundamental principle underlying the law on the responsibility of the State, supported by international case law, sets forth that the States must comply with the conventional obligations thereof in good faith (*pacta sunt servanda*).⁴

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* *

9. That, regarding the situation of Islena Rey, the State has implemented several measures aimed at affording protection in her behalf (*supra* Having Seen clauses No. 8(a)(i), 11(a)(i), and 11(a)(iv)). Notwithstanding, the Court notes with concern that difficulties and deficiencies have arisen regarding its implementation, which are reflected, *inter alia*, in the events occurred between the escorts and the beneficiary (*supra* Having Seen clauses No. 8(a)(iii), 8(a)(v), 8(a)(vii), 10(a)(ii), 10(a)(vii), 10(a)(viii), 11(a)(i), and 11(a)(ii)), in the operating problems of the vehicle allocated to the protection plan afforded to the beneficiary (*supra* Having Seen clauses No. 8(a)(iv) and 10(a)(iii)), in the allocation of the resources necessary for the implementation of the protection measures (*supra* Having Seen clauses No. 8(a)(iv), 10(a)(iii), 10(a)(iv), and 11(a)(ii)), in the communication problems and the lack of coordination between the State and the beneficiary (*supra* Having Seen clauses No. 8(a)(vi), 10(a)(vi), and 11(a)(i)), and in the non-reassessment of the degree of risk and threat the beneficiary faces at present (*supra* Having Seen clause No. 8(a)(v)).

Prieto et al. Provisional Measures. Order of the Inter-American Court of Human Rights of September 26, 2006, Considering clause No. 7.

² Cf. *Case of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo, Brazil*. Provisional Measures, *supra* note 1, Considering clause No. 7; *Matter of Gloria Giralt de García-Prieto et al.* Provisional Measures, *supra* note 1, Considering clause No. 5; and *Matter of Mery Naranjo et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering clause No. 7.

³ Cf. *Matter of Carlos Nieto et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering clause No. 6; *Matter of the Forensic Anthropology Foundation*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 7; and *Matter of Ramírez Hinostroza et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 4.

⁴ Cf. *Case of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo, Brazil*. Provisional Measures, *supra* note 1, Considering clause No. 19; *Case of 19 Tradesmen*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 16; and *Case of the Forensic Anthropology Foundation*. Provisional Measures, *supra* note 3, Considering clause No. 8.

10. That the parties have informed about alleged new acts of harassment against Islena Rey, which occurred following the last Order of the Court in the instant case (*supra* Having Seen clauses No. 8(a)(ii) and 11(a)(iii)), whereby the Court deems that the situation of extreme gravity and urgency which justifies maintaining the provisional measures adopted in her behalf still persists.

11. That the State has the duty to plan and implement a protection plan in behalf of Islena Rey in conjunction with the beneficiary, preventing situations which might put her life and physical integrity at risk, and providing the necessary resources for the effective implementation of such plan. In this regard, it is essential that the State authorities and Islena Rey start a dialogue at coordination and negotiation meetings held in order to reconcile their differences and resolve the difficulties described above as to the implementation of the protection measures in behalf of said beneficiary (*supra* Considering clause No. 9).

12. That regarding the alleged irregularities in the use of the protection measures by Islena Rey (*supra* Having Seen clauses No. 8(a)(v) and 10(a)(v)), the Court reiterates that it is the State which has the duty to implement the provisional measures ordered by the Court and that the Court does not set forth the duties of the beneficiaries of such measures.

13. That the parties have submitted no information regarding Sister Noemy Palencia, particularly as to whether she has returned to Meta Department (*supra* Having Seen clause No. 8(a)(viii)). In view of the foregoing, the parties must submit up-to-date information regarding the situation of said beneficiary. Furthermore, up to the moment the Court has received such information, it will deem that the situation of extreme gravity and urgency which gave rise to the adoption of provisional measures in her behalf still persists.

14. That Mariela de Giraldo and her two daughters, Sara and Natalia Giraldo, have not accepted the protection offered by the State, and that the State has carried out an assessment of the degree of risk they face and has made recommendations regarding the safety thereof, and visits are made around their house (*supra* Having Seen clause 8(a)(viii)). In this regard, it is necessary that the parties inform the Court if the situation of extreme gravity and urgency which gave rise to the adoption of provisional measures in their behalf still persists. Notwithstanding, up to the moment the Court has received the foregoing information, it will deem that such situation persists.

15. That it is not relevant to render judgment on "the professional survivor pension" granted to Mariela de Giraldo and her two daughters, Sara and Natalia Giraldo (*supra* Having Seen clauses No. 8(a)(x) and 11(a)(v)), as, in accordance with the object of these provisional measures, it is not incumbent upon the Court to decide on this matter.

16. That regarding the duty to investigate the facts denounced which gave rise to the adoption of these provisional measures in order to identify those responsible for such acts and, where appropriate, punish them, the State has informed about the investigations started into the death of Pedro Malagón, Elda Milena Malagón, Josué Giraldo-Cardona, Humberto and Gonzalo Zárate-Triana, and Samuel Vacca (*supra* Having Seen clauses No. 8(b)(i), 8(b)(ii), 8(b)(iii), 8(b)(iv), and 8(b)(vi)), into the threats and acts of harassment suffered by Islena Rey (*supra* Having Seen clause No. 8(b)(v), into the alleged torture suffered by Guillermo Parra and Efrén Ibáñez (*supra* Having Seen clause No. 8(b)(vii)), and into the kidnapping of Alberto Barbosa-Torres (*supra* Having Seen clause No. 8(b)(viii)), as well as into the disciplinary investigation proceedings started against escort Luis Adolfo Cárdenas-

Barrera (*supra* Having Seen clause No. 8(b)(ix)). The information submitted has not been sufficiently accurate and complete for the Court to deem that it has all the evidence required to assess the effectiveness of the investigations conducted and their relevancy to elucidate the facts which gave rise to the adoption of these measures, as well as to identify those responsible for such acts and impose the sanctions prescribed thereon. In view of the foregoing, the State must submit more detailed and up-to-date information about such proceedings.

17. That the submission of the information requested by the Court is essential to assess the effective compliance of the protection measures ordered by the Court.

18. That from the information which has been submitted it can be inferred that the measures necessary for reopening the *Comité Cívico por los Derechos Humanos del Meta* (Meta Department Human Rights Civic Committee) have not been adopted (*supra* Having Seen clauses No. 8(c), 10(c), and 11(c)). In view of the foregoing, the State must adopt effective measures in conjunction with the beneficiaries or the representatives thereof in order to reopen said Committee.

19. That the States have the specific duty to protect those persons who work in non-government organizations, as well as to afford effective and adequate guarantees to defenders of human rights so that they may freely perform their activities, preventing actions which restrict or hamper their work, as the activities they carry out are a positive contribution which supplements the actions taken by the State as guarantor of the rights of the persons under the jurisdiction thereof.⁵

20. That no coordination and negotiation meetings have been held between the beneficiaries and the State since January 27, 2005 (*supra* Having Seen clauses No. 8(d)(i), 10(d)(i), and 11(d)). In this regard, the State must take all such steps as may be relevant in order to plan and implement the measures ordered by the Court in conjunction with the beneficiaries, so that such protection measures may be duly and effectively afforded.

21. That it is essential that the provisional measures are maintained in full force and effect until the Court orders their discontinuance and serves notice thereof⁶ upon the State.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

Pursuant to Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of its Rules of Procedure,

⁵ Cf. *Case of the Plan de Sánchez Massacre. In favor of the members of the Equipo de estudios comunitarios y acción psicosocial* (Community Studies and Psychological Action Team) (*ECAP*). Provisional Measures, *supra* note 1, Considering clause No. 10; *Matter of Gloria Giralte de García-Prieto et al.* Provisional Measures, *supra* note 1, Considering clause No. 8; and *Matter of Mery Naranjo et al.* Provisional Measures, *supra* note 2, Considering clause No. 8; OAS General Assembly Resolution 2067 (XXXV-O/05); OAS General Assembly Resolution 2036 (XXXIV-O/04); OAS General Assembly Resolution 1920 (XXXIII-O/03); OAS General Assembly Resolution 1842 (XXXII-O/02); OAS General Assembly Resolution 1818 (XXXI-O/01); and UN Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. General Assembly Resolution 53/144.

⁶ Cf. *Matter of Gómez-Paquiyaury*. Provisional Measures. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering clause No. 19; *Matter of Marta Colomina and Liliana Velásquez*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 4; and *Matter of Ramírez-Hinostroza et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of February 7, 2006, Considering clause No. 6.

DECIDES:

1. To request the State to maintain the provisional measures and adopt such other measures as may be necessary to protect the life and physical integrity of Sister Noemy Palencia (as soon as she returns to Meta Department), of Islena Rey, and of Mariela de Giraldo and her two minor daughters, Sara and Natalia Giraldo.
2. To reiterate the request made to the State to investigate the facts denounced which gave rise to the adoption of these measures in order to identify those responsible for such acts and, where appropriate, punish them, and to inform the Inter-American Court of Human Rights about said investigation.
3. To reiterate the request made to the State to inform about the steps taken in order to reopen the *Comité Cívico por los Derechos Humanos del Meta* (Meta Department Human Rights Civic Committee).
4. To reiterate the request made to the State so that the beneficiaries of the provisional measures be allowed to take part in the planning and implementation thereof and, in general, to keep them informed about the progress regarding the compliance with the measures ordered by the Inter-American Court of Human Rights.
5. To request the State to submit its forty-seventh report on the compliance with the measures adopted no later than January 31, 2007.
6. To request the State to continue informing the Inter-American Court of Human Rights every two months as from the date on which the report of the State required in the foregoing operative paragraph has been submitted, and to request the Inter-American Commission on Human Rights and the beneficiaries of these measures or the representatives thereof to submit their observations on the report of the State required in the foregoing operative paragraph, as well as on the two-monthly reports of the State, within the term of six and four weeks respectively of the date on which they have been submitted.
7. To request the Secretariat to serve notice of this Order to the Inter-American Commission on Human Rights, to the representative of the beneficiaries of these measures, and to 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