

**Order of the President of the
Inter-American Court of Human Rights
of December 17, 2007
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 President of the Court") of October 9, 2000.
2. The public hearings held at the seat of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on November 16, 2000, June 13, 2002, and March 14, 2005.
3. The Orders of the Inter-American Court of November 24, 2000, June 18, 2002, November 17, 2004, March 15, 2005, and February 2, 2006.
4. The reports of the State of Colombia (hereinafter "the State") of March 21, April 11, June 27 and September 14, 2006, and February 14, June 13, August 2 and November 7, 2007, together with the communication of November 26, 2007.
5. The note of the beneficiaries of these provisional measures, the members of the Peace Community of San José de Apartadó (hereinafter "the Peace Community") of April 17, 2002, in which it appointed a new representative. The observations of the representative (hereinafter "the representative") of May 4, August 7 and October 31, 2006, and March 7, April 3, May 20, July 17, July 27, October 2 and December 2, 2007.
6. The observations of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") of August 11, 2006, and January 7, March 25, April 25, May 28 and October 5, 2007.

CONSIDERING:

1. That Colombia ratified the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") on July 31, 1973, and accepted the jurisdiction of the Inter-American Court, pursuant to Article 62 of the Convention on June 21, 1985.
2. That Article 63(2) of the American Convention establishes that: "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With 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's Rules of Procedure stipulates 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, pursuant to the Order of the President of the Court of October 9, 2000, and the Orders of the Inter-American Court of November 24, 2000, June 18, 2002, November 17, 2004, March 15, 2005, and February 2, 2006 (*supra* third having seen paragraph), the State must, *inter alia*: (a) adopt the necessary measures to protect the life and personal integrity of all the members of the Peace Community; (b) maintain the necessary measures to ensure that the beneficiaries may continue living in their usual residence and ensure the necessary conditions so that the members of the Peace Community who have been forced to displace to other parts of the country may return to their homes; and (c) establish, by mutual agreement with the beneficiaries or their representatives, a mechanism for continuous monitoring and permanent security in this Community.

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5. That, in matters such as this,¹ the Court has ordered the protection of a plurality of individuals who have not been named previously, but who can be identified and determined, and who are in a situation of grave danger owing to their membership in a group or community.

6. That the State asked the Court to "define which settlements in the district (*corregimiento*) of San José de Apartadó are covered by the Order for provisional measures, and, if possible, the approximate number of people or groups of people. In its most recent communication of November 6, 2007, the State reiterated this request and asked the Court "to indicate the names of the beneficiaries [of these provisional measures]."

7. That, when ordering these provisional measures, the Court estimated that the Peace Community of San José de Apartadó was composed of approximately 1,200 people; hence, it constituted "an organized community, located in a specific geographical place, whose members can be identified and individualized."² According to information provided by the representative, the Peace Community is mainly established in the central settlement of San José de Apartadó, and the villages (*veredas*) of La Unión, Arenas Altas and La Esperanza, as well as in another eight villages where "Humanitarian Zones" have been set up.

8. That, since one of the State's obligations in the context of these provisional measures is to ensure the necessary conditions for the members of the Peace Community who were forced to displace to other parts of the country to return to their homes, the State reported that more than 1,000 families had returned voluntarily to the district of San José de Apartadó, and had been provided with institutional support. However, the representative

¹ Cf., *inter alia*, *Matter of the Peace Community of San José de Apartadó v. Colombia*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of November 24, 2000, seventh considering paragraph; *Case of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM v. Brazil*. Provisional measures. Order of the Inter-American Court of Human Rights of November 30, 2005, sixth considering paragraph; *Matter of The Communities of Jiguamiandó and Curbaradó v. Colombia*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of February 7 2006, eighth considering paragraph.

² *Matter of the Peace Community of San José de Apartadó v. Colombia*. Provisional measures with regard to Colombia. *supra* note 1, seventh considering paragraph.

rejected this information provided by the State, affirming that “unknown families have arrived and some of them occupy houses previously occupied by those displaced.”

9. That, seven years after the adoption of provisional measures, the Court does not have reliable up-to-date information on the number of people who, at the present time, compose the Peace Community, or about their main settlements; and this information is essential for the proper implementation of these measures. Consequently, the President considers that the representative, the Inter-American Commission, and the State must provide the Court with more information on this point.

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10. That the representative reported the deaths of Francisco Puerta and Dairo Torres, both members of the Peace Community, on May 14 and July 13, 2007, respectively. According to the representative, Francisco Puerta and Dairo Torres were allegedly murdered by paramilitary forces, at sites where the National Police “generally exercise firm control. The representative also denounced that, on November 13, 2006, Elidio (Nubar) Tuberquia received “severe blows to the head” that resulted in “brain death,” and “the circumstances [...] indicated that the Police were responsible.” In his latest brief with observations, the representative reported on the death of two young people who lived near the Peace Community: Alfonso de Jesús Bedoya Florez, a 19-year old peasant, and Héctor Jaime Orozco Grisales, 26 years of age. The representative did not indicate whether these two young men were members of the Peace Community.

Furthermore, in his observations on the State’s reports, the representative denounced alleged threats and harassment against members of the Peace Community (*supra* fifth having seen paragraph). Among the acts he reported, the most important were the death threats allegedly received by Rodrigo Rodríguez, coordinator of the Arenas Altos Humanitarian Zone; the alleged accusations and death threats against Eduar Lancho, sympathizer with and member of the Peace Community; the injuries allegedly caused by members of the Army to Efrén Espinoza Goéz, a 10-year old boy, member of the Peace Community, in the village of Arenas Altas; and also the alleged threats purportedly made by members of a paramilitary group against people living in La Esperanza and Playa Larga on November 24, 2007 (*supra* fifth having seen paragraph).

Based on the above, the representative urged the Court to ask the State “under no circumstance, to entrust the protection of the beneficiaries to the Police, since it is increasingly evident that they are collaborating with the paramilitary groups.” He also repeated that “the presence of the police post inside the territory where the Peace Community lives and works tramples on one of the essential principles of any Peace Community: that of not being involved with or living alongside any armed protagonist, from either side.”

11. That, in its reports (*supra* fourth having seen paragraph), the State referred, *inter alia*, to the deaths of Messrs. Puerta and Torres. Regarding Francisco Puerta, the State reported that when it learned of the unfortunate event [the Public Prosecutor’s Office (*Procuraduría General*)] ordered the competent authorities to deploy all necessary mechanisms to avoid another tragedy in the region.” It also indicated that the Prosecutor General’s Office (*Fiscalía General*) reassigned the Delegate Prosecutor to the judges of the Specialized Circuit, attached to the National Human Rights Unit in Medellín, to which the case was consigned, to conduct the investigation into the murder of Francisco Puerta to its ultimate consequences. Regarding the circumstances of his death, the State reported that

this deed “occurred in a peripheral district of the municipality of Apartadó, far from the Transport Terminal; also, it took place during the night of May 13, in a bar called the *Punto Cervecerero*, [...] and the presence of members of the National Police had been ruled out.” Regarding the death of Dairo Torres, the State reported that “an investigation is being conducted by the 97th Sectional Prosecutor’s Office of Apartadó.” In relation to the representative’s statements about the threats suffered by Rodrigo Rodríguez, the State indicated that, although protection measures had been requested for Mr. Rodríguez, it has been unable to locate him to date. According to the State, the beneficiary probably decided that “it was not prudent to receive protection from the National Police, since one of the principles of the said Community was the non-participation of any armed actor, [...] because this endangered [...] the local inhabitants.” Regarding the report on the alleged links between illegal armed groups and members of the Police, the State reiterated that “the police agents stationed in San José de Apartadó and in the town center of the municipality of Apartadó do not have links with any paramilitary or similar group.” In this regard, it indicated that “no direct, specific accusation has been made, merely general accusations that do not refer to specific individuals or facts.”

The State also reported on visits to the Peace Community and meetings with members, in order “to review the safety measures” that had been implemented, which the beneficiaries or their representatives had allegedly not attended. In this regard, the State indicated that “the Police have tried to visit the Peace Community of San José de Apartadó, accompanied by entities such as the Prosecutor’s Office, the Ombudsman’s Office, the Presidential Agency for Social Action and International Cooperation (*Acción Social*), and the Mayor’s Office; however, to date, it has not been possible to establish communication in order to find out about the actual situation in the La Holandita settlement, since they do not accept any help from State institutions. To the contrary, they consider any type of rapprochement to be an action that endangers the safety of the Peace Community [...].”

12. That, based on the information provided by the representative, the Inter-American Commission expressed (*supra* sixth having seen paragraph), *inter alia*, its concern regarding the recent events that have affected the beneficiaries and about the “situation in the area where they live [...] and its impact on the civilian population in general, given the presence of armed elements belonging to guerrilla and paramilitary groups, as well as the frequent reports of acts of acquiescence and collaboration between members of the Police and illegal armed groups.”

13. That, given the seriousness of the reports made by the representative and the difficulties in implementing the protection measures mentioned by the State, the President considers that the Court needs to receive further information in this regard, so as to guarantee the effective protection of the civilian beneficiaries of these provisional measures.

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14. That the State acknowledged that the meetings to reach agreement on the implementation of the provisional measures had not taken place and indicated that this was due “to the petitioners’ refusal to attend them”; nevertheless, it reiterated its willingness to collaborate with the beneficiaries of these measures. In this regard, it agreed with the Inter-American Commission that “the measures for the effective safety and protection of the inhabitants of the Peace Community of San José de Apartadó should be coordinated with the beneficiaries and their representatives. However, [it indicated that] the protection measures that have been adopted [...] have fallen within the general framework of the Army’s legal

and constitutional obligations, since the beneficiaries and petitioners of the present measures have not wanted to hold conversations with the State.”

15. That the representative indicated that the members of the Peace Community refuse to return to consensus-building meetings with the State “on the grounds of bad faith.” In this regard, he indicated that the Peace Community “have not terminated the effort to build consensus, but as a minimum condition, it requires” among other matters, respect for the Humanitarian Zones and the withdrawal of the police post from the center of San José de Apartadó, in order to return to the concertation meetings to discuss “fairer conditions for installing a police post.”

16. That the Commission recalled that “the beneficiaries and their representatives have expressed concern about the role of members of the Police in the zone, vis-à-vis the illegal armed groups operating there, and have elaborated a series of reports on their responsibility by act or omission or for acts of harassment. While individuals linked to the Police continue to be identified with the acts of violence and the threats that justified the issue of provisional measures and their continuation, obstacles will persist to the implementation of continuous monitoring mechanisms with the beneficiaries, over and above the actions deployed by the Police in the zone.”

17. That, based on the above, the President considers that the Court needs to hear the points of view of the Inter-American Commission, the representative, and the State concerning the measures the parties should adopt in order to overcome the obstacles to building consensus that have occurred while these provisional measures were being processed.

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18. That Article 25(7) of the Court’s Rules of Procedure establishes that:

The Court, or its President if the Court is not sitting, may convoke the parties to a public hearing on provisional measures.

19. That, regarding hearings, Article 14(1) of the Rules of Procedure stipulates that:

Hearings shall be public and shall be held at the seat of the Court. When exceptional circumstances so warrant, the Court may decide to hold a hearing in private or at a different location. The Court shall decide who may attend such hearings. Even in these cases, however, minutes shall be kept in the manner prescribed in Article 43 of these Rules.

20. That, based on all the above, the President, in consultation with the judges, considers it necessary and opportune to convoke a public hearing to listen to the allegations of the Commission, the representative, and the State about, *inter alia*: (a) determination of updated information on the number of people who are members of the Peace Community and the settlement where they reside; (b) the grave facts denounced by the representative (*supra* tenth considering paragraph); (c) the difficulties posed in the implementation of the measures ordered in the instant case, and also (d) how to overcome the obstacles to consensus-building, pursuant to the ninth, thirteenth and seventeenth considering paragraph of this Order.

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred by Article 63(2) of the American Convention on Human Rights, Article 25(2) of the Court's Statute, and Articles 4, 25(7) and 29(2) of the Court's Rules of Procedure, and in consultation with the judges of the Court,

DECIDES:

1. To convoke the Inter-American Commission on Human Rights, the representative of the beneficiaries of the provisional measures, and the State of Colombia to a public hearing to be held at the seat of the Inter-American Court of Human Rights on February 4, 2008, from 5 p.m. to 6.30 p.m., so that the Court may hear the arguments of members of the Peace Community of San José de Apartadó, in accordance with the twentieth considering paragraph of this Order.

2. To notify this Order to the Inter-American Commission on Human Rights, to the representative of the beneficiaries of the provisional measures, and to the State of Colombia.

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary