

**Order of the
Inter-American Court of Human Rights
of May 3, 2008
Provisional Measures
with regard to Colombia
Case of the Mapiripán Massacre**

HAVING SEEN:

1. The Order for urgent measures issued by the President of the Inter-American Court of Human Rights on February 4, 2005, in which he decided:

1. To require the State to take such steps as might be necessary, forthwith, to protect the rights to life and humane treatment of the following persons and their next of kin:

1. Carmen Johana Jaramillo-Giraldo, 2. Esther Pinzón-López, 3. Sara Paola Pinzón-López, 4. María Teresa Pinzón-López, 5. Yur Mary Herrera-Contreras, 6. Zully Herrera-Contreras, 7. Maryuri Caicedo-Contreras, 8. Nadia Marina Valencia-Sanmiguel, 9. Yinda Adriana Valencia-Sanmiguel, 10. Johana Marina Valencia-Sanmiguel, 11. Gustavo Caicedo-Contreras, 12. Rusbel Asdrúbal Martínez-Contreras, 13. Roland Andrés Valencia-Sanmiguel, 14. Ronald Mayiber Valencia-Sanmiguel, 15. Luis Guillermo Pérez, 16. Nory Giraldo de Jaramillo, 17. Marina San Miguel-Duarte, 18. Viviana Barrera-Cruz, 19. Luz Mery Pinzón-López, and 20. Mariela Contreras-Cruz.

2. To require the State to investigate the facts that gave rise to said urgent measures, and to identify those responsible and punish them as appropriate.

3. To require the State to allow the representatives of the beneficiaries to participate in the planning and implementation of the provisional measures, and, in general, to inform the Court of the progress regarding the implementation of said measures.
[...]

2. The Order for provisional measures issued by the Inter-American Court of Human Rights (hereinafter, "the Court" or "the Inter-American Court") on June 27, 2005, in which the Court decided, *inter alia*:

1. To ratify the Order for urgent measures issued by the President on February 4, 2005.

2. To require the State to take such steps as might be necessary, forthwith, to protect the rights to life and humane treatment of the following persons and their next of kin:

1. Carmen Johana Jaramillo-Giraldo,
2. Esther Pinzón-López,
3. Sara Paola Pinzón-López,
4. María Teresa Pinzón-López,
5. Yur Mary Herrera-Contreras,
6. Zully Herrera-Contreras,
7. Maryuri Caicedo-Contreras,
8. Nadia Marina Valencia-Sanmiguel,
9. Yinda Adriana Valencia-Sanmiguel,
10. Johana Marina Valencia-Sanmiguel,
11. Gustavo Caicedo-Contreras,
12. Rusbel Asdrúbal Martínez-Contreras,
13. Roland Andrés Valencia-Sanmiguel,
14. Ronald Mayiber Valencia-Sanmiguel,

15. Luis Guillermo Pérez,
16. Nory Giraldo de Jaramillo,
17. Marina San Miguel-Duarte,
18. Viviana Barrera-Cruz,
19. Luz Mery Pinzón-López, y
20. Mariela Contreras-Cruz.

3. To require the State to investigate the facts that gave rise to said urgent measures, and to identify those responsible and punish them as appropriate.

4. To require the State to allow the representatives of the beneficiaries to participate in the planning and implementation of the provisional measures, and, in general, to inform the Court of progress regarding the implementation of said measures.
[...]

3. The second and third reports submitted by the State of Colombia (hereinafter, "the State" or "Colombia") on the implementation of the provisional measures on August 24, and November 8, 2005, as well as the comments submitted by the representatives of the beneficiaries of the provisional measures (hereinafter, "the representatives") on October 7, and December 22, 2005, and by the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission" or "the Commission") on December 16, 2005, and January 20, 2006.

4. The note submitted by the Secretariat of the Court (hereinafter, "the Secretariat") on May 25, 2006, in which, following the instructions of the President, it requested the State to submit, as soon as possible, the fourth, fifth, and sixth reports on the implementation of the provisional measures, whose terms for submission had expired on January 3, March 3, and May 3, 2006, respectively.

5. The report submitted by the State on July 19, 2006, which constituted its fourth, fifth and sixth reports, as well as the comments on said report submitted by the Commission on September 13, 2006.

6. The note submitted by the Secretariat on February 27, 2007, in which it stated that the terms for the State to submit its seventh, eighth, and ninth reports on the provisional measures had expired, respectively, on September 19, 2006, November 19, 2006, and January 19, 2007. Furthermore, the Secretariat stated that the term for the representatives to submit their comments on the fourth, fifth, and sixth reports of the State had expired on August 25, 2006. Consequently, following the instructions of the President, the Secretariat requested the State and the representatives to submit, no later than March 14, 2007, in a single written document, all reports and comments pending submission, which should include updated concrete information on the manner in which said measures would have been implemented. Finally, the Secretariat stated that, once the Court has this information and the comments of the parties, it should be decided whether the provisional measures shall continue in force.

7. The reports submitted by the State on April 18, May 9, and July 24, 2007. The State asked the Court, in its latter report, to "consider the possibility of rescinding" the provisional measures so ordered.

8. The notes submitted by the Secretariat on April 20, May 22, and July 31, 2007, in which it stated that the terms for representatives to submit their comments on the reports submitted by the State on July 19, 2006, May 8, and July 24, 2007, had expired. For this reason, the Secretariat asked the representatives to submit said comments as soon as possible. Furthermore, the Secretariat also stated that it has not received the Commission's

comments on the report submitted by the State on May 16, 2007, whose term for submission had expired on July 3, 2007. The Secretariat, in its latter note, asked the representatives and the Commission to specifically refer, in their comments, to the request for rescinding the provisional measures submitted by the State, and to state their reasoned opinion as regards the continuity and existence of a situation of extreme gravity and urgency, and imminent irreparable damage to persons that would justify the need to keep said provisional measures in force.

9. The brief filed on August 17, 2007, in which the Inter-American Commission expressed its comments on the reports submitted by the State on May 8, and July 24, 2007.

10. The note submitted by the Secretariat on January 11, 2008, in which it stated that the terms for the State to submit its ninth and tenth reports had expired. The Secretariat also reiterated that the representatives had not yet submitted their comments on the reports submitted by the State (*supra* Having Seen paragraph No. 8). For this last reason, the Secretariat calls upon the representatives to submit said comments as soon as possible. As at the date hereof, the State's reports and the representatives' comments have not been received.

CONSIDERING:

1. That Colombia is a State Party to the American Convention on Human Rights (hereinafter, "the American Convention" or "the Convention") since July 31, 1973, and it acknowledged the contentious jurisdiction of the Court on June 21, 1985.

2. That Article 63(2) of the American Convention provides that:

In 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 regard to a case not yet submitted to the Court, it may act at the request of the Commission.

3. That Article 25 of the Rules of Procedure provides that:

1. At any stage of the proceeding 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 whatever provisional measures it deems appropriate, pursuant to Article 63(2) of the Convention.

[...]

3. In contentious cases already submitted to the Court, the victims or alleged victims, their next of kin, or their duly accredited representatives, may present a request for provisional measures directly to the Court.

[...]

6. The beneficiaries of urgent measures or provisional measures ordered by the President may address their comments on the report made by the State directly to the Court. The Inter-American Commission of Human Rights shall present observations to the State's report and the observations of the beneficiaries or their representatives. [...]

4. That the State has not submitted the reports on the implementation of the provisional measures within the established terms for submission. According to the submitted reports, the State has been implementing measures to protect the rights to life and humane treatment of the beneficiaries, which include, *inter alia*, assistance to

temporarily relocate Nory Giraldo de Jaramillo, Carmen Johanna Jaramillo-Giraldo, Viviana Barrera-Cruz, and Marina Sanmiguel-Duarte; delivery of communication equipment (cellular phones) to the abovementioned persons (except for Mrs. Jaramillo), and assistance in land transportation. Furthermore, it informed that, since mid-2006, the State has not learnt of any threats or harassment against the beneficiaries. Therefore, the State expressed that “considering that the beneficiaries of the abovementioned measures have not suffered any new threat or any situation that may endanger their rights to life and humane treatment, and that the State has timely adopted the measures agreed with the beneficiaries, it requests the [...] Court to analyze the possibility of rescinding the ordered provisional measures.” As regards the investigation, the State informed that there is a record on the facts that motivated the adoption of said measures in the Government Attorney’s Office 125 in Bogotá since it was reassigned on February 14, 2006. The Specialized Government Attorney’s Office of Villavicencio had started said investigation, which was later assigned, under a Court order of October 3, 2005, to the National Human Rights Unit. Said Unit later decided it had no jurisdiction on this matter and reassigned the investigation. In the context of said investigation, authorities drafted a Methodological Program ordering to “define the alleged terrorist threats[;] interview the representative of the *Colectivo de Abogados*, [and] collect evidence,” which could not be carried out as at July, 2007, although other pieces of evidence were obtained. Furthermore, the State informed of two coordination meetings held on September 14, and November 30, 2005.

5. That the representatives have not submitted any comments on the State’s reports since December 2005. In their last brief of comments, the representatives they asserted that the protection measures –which include delivery of communication equipment, assistance to help the beneficiaries move in case of emergency, and assistance to temporarily relocate one of the families in the city of Villavicencio– had been partially implemented. As regards the investigation, they held that no person had been found to be connected to said process. Furthermore, the representatives informed of new acts of aggression that took place in November 2005. Particularly, they notified that “Mrs. Viviana Barrera ha[d] been subjected to harassment, aggression, and intimidation by individuals, and civil and military authorities of the municipality of Mapiripán.”

6. That the Commission has expressed that the State has not given updated information on the effective compliance with all its obligations, such as the temporal relocation of the beneficiaries and the delivery of communication equipment. Therefore, the Commission expressed its concerns about the lack of certainty as regards the current situation of the beneficiaries and the lack of updated information on the State’s protection activities. Furthermore, it held that it was necessary that the beneficiaries submit their comments and that more precise and concrete information as regards the safety condition of each beneficiary and the corresponding protection measures be gathered. As regards the investigation, the Commission stressed the lack of significant progress and that the State failed to provide an explanation regarding the reasons why the collection of certain evidence rendered impossible or was delayed. As regards the lack of updated information on the coordination meetings, the Commission is looking forward to receiving any comments that the representatives are willing to submit. Finally, it concluded that “there are no grounds to affirm that the absence of situations of extreme gravity and urgency, and of imminent irreparable damage to persons justifies the adoption of the provisional measures in the instant case,” and that the failure to implement the measures ordered by the Court in the Judgment on the merits and reparations, with regard to the obligation to investigate the events in the instant case, “has [a] direct impact on the safety conditions of the beneficiaries of the provisional measures and on the persistence of the risk factors justifying [their] adoption and effectiveness.”

7. That the provisional measures have an exceptional nature and are therefore ordered having regard to the needs for protection and, once ordered, they must be maintained in force if the Court considers that the basic requirements of the situation of extreme gravity and urgency, and the need to avoid irreparable damage to the rights of the persons protected by said measures, still exist.¹

8. That this Court considers that the State has not given detailed information on the current risk situation of each beneficiary or on the protection measures the State is implementing to protect the beneficiaries. In fact, the State has given information solely on some of the 20 persons and their next of kin that are beneficiaries of the provisional measures (*supra* Considering paragraph No. 4). Furthermore, it is particularly worrisome that the representatives of the beneficiaries have not yet submitted their comments.

9. That the State has not yet submitted its reports and the insufficient information given by the representatives are an obstacle to determining the real situation of the beneficiaries of the measures, which resulted in a situation of uncertainty, in certain periods, that is not compatible with the preventive and protective nature of the provisional measures.

10. That the Court has established that failure by the State to comply with its duty to report on the provisional measures adopted in compliance with Court orders is particularly serious given the legal nature of these measures, which seek to prevent irreparable damage to persons in a situation of extreme gravity and urgency.² The duty to report is twofold in that compliance with said duty requires the formal submission of a document within the specified time limit as well as the specific, updated, detailed and factual material reference to the issues that fall within the scope of said obligation.³ It is paramount that the ordered measures get reflected in the State's reports describing the means, actions, and goals set by the State in agreement with the specific needs of protection of the beneficiaries thereof, in such a manner that they give real sense and provide a continuum in those reports.⁴

11. That, despite the foregoing, the Court stresses the particular importance of the comments on the information furnished by the State that both the Commission and the representatives of the beneficiaries may submit. Said comments are essential to evaluate

¹ Cf. *Case of the Constitutional Court*. Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of March 14, 2001, Considering paragraph No. 3; *Case of Álvarez et al.* Provisional Measures regarding the Republic of Colombia. Order of the Inter-American Court of Human Rights of February 8, 2008, Considering paragraph No. 13; and *Case of Caballero-Delgado and Santana v. Colombia*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering paragraph No. 7.

² Cf., *inter alia*, *Matter of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 7, 2006, Considering paragraph No. 16; *Matter of San José de Apartadó Peace Community*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 2, 2006, Considering paragraph No. 17; and *Case of Bámaca-Velásquez*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of March 11, 2005, Considering paragraph No. 15.

³ Cf., *inter alia*, *Matter of Carlos Nieto-Palma et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering paragraph No. 16; *Matter of the Mendoza Prisons*. Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of March 30, 2006, Considering paragraph No. 14; and *Matter of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 7, 2006, Considering paragraph No. 16.

⁴ Cf. *Matter of the Mendoza Prisons*. Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of March 30, 2006, Considering paragraph No. 14

the implementation, by the State, of the provisional measures ordered by the Court, considering the gravity of the situation and the particular risk situation of the beneficiaries, and the role of the Inter-American Commission within the Inter-American System.

12. That it is necessary that the Court receive from the parties -in full and in a timely fashion- the information on the status of the provisional measures ordered to protect each beneficiary, in order to effectively control the due implementation of said measures. As a consequence, the Court considers desirable to keep the provisional measures in force and to ask the representatives to submit any pending comments and to inform the Court on the persistence of the specific risk situation of each beneficiary, and particularly on any event taking place during 2007 and 2008 that may give reasons to the Court to assume that there still exists a situation of extreme gravity and urgency, in order that the Court may determine, within a period of six months, the need to maintain said protection measures. If within the specified timeframe no information has been furnished, the Court shall decide on the rescission of the provisional measures.

NOW THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority conferred upon it under Article 63(2) of the American Convention on Human Rights, and Articles 25 and 29 of its Rules of Procedure,

DECIDES:

1. To call upon the State of Colombia to maintain in force the provisional measures adopted in the Order of the Court of June 27, 2005 (*supra* Having Seen paragraph No. 2).
2. To call upon the representatives, in compliance with the provisions of Considering paragraph No. 12 herein, to submit as soon as practicable, any comments pending submission and, in particular, the concrete information on the situation of the beneficiaries of the provisional measures so ordered. In said comments the representatives shall accurately specify if there is a continuing situation of extreme gravity and urgency calling for actions to avoid irreparable damage to persons in order that the Court may determine the need to maintain said protection measures. If within six months from the date this Order is served no information has been furnished, the Court shall decide on the rescission of the provisional measures.
3. To call upon the State to submit, no later than June 9, 2008, a report on the implementation of the provisional measures, in particular, detailed information on the risk situation of each beneficiary of the provisional measures, the protection measures adopted in relation to them and the current status and results of the ongoing investigations of the events that gave rise to said measures. After submission of said report, the State must keep the Inter-American Court informed on a two-month basis of the provisional measures adopted.

4. To call upon the representatives of the beneficiaries of the provisional measures and the Inter-American Commission on Human Rights to submit comments on the reports furnished by the State in compliance with the previous operative paragraph within the term of four and six months, respectively, as from service thereof.

5. To request the Secretariat to serve notice of this Order to the State, the Inter-American Commission on Human Rights, and the representatives of the beneficiaries of the provisional measures.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Manuel E. Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary