

**Order of the  
Inter-American Court of Human Rights  
of July 9, 2009  
Provisional Measures regarding Colombia  
Case of Gutiérrez Soler**

**HAVING SEEN:**

1. The Order of the Inter-American Court of Human Rights (hereinafter, "the Court," "the Inter-American Court" or "the Tribunal") of March 11, 2005, through which the provisional measures of the present case were ordered.
2. The Judgment on merits, reparations, and costs issued by the Inter-American Court on September 12, 2005, in this case, through which it resolved that the State "must see particularly to guarantee the life, integrity, and security of Mr. Wilson and Ricardo Gutierrez Soler and their next of kin, and must offer them the necessary protection from any persons, taking into account the circumstances of this case, in conformity with the Order of provisional measures dictated by the Tribunal on March 11, 2005." (tenth operative paragraph of the Judgment on merits, reparations, and costs of September 12, 2005).
3. The Order dictated by the Court on November 27, 2007, through which it resolved:
  1. To require the State of Colombia to maintain and adopt the necessary measures to: a) protect the life and personal integrity of María Elena Soler de Gutiérrez, Carlos Andrés Gutiérrez Rubiano and Leydi Caterin Gutiérrez Peña; b) to protect the life, personal integrity, and personal liberty of Mr. Wilson Gutiérrez Soler and his son Kevin Daniel Gutiérrez Niño, as well as of Ricardo Gutiérrez Soler, Yaqueline Reyes, Leonardo Gutiérrez Rubiano, Ricardo Gutiérrez Rubiano, Sulma Tatiana Gutiérrez Rubiano, Paula Camila Gutiérrez Reyes and Luisa Fernanda Gutiérrez Reyes, in the case that they return to the country, in conformity with [...] of the present Order.
  2. To require the State of Colombia to present an evaluation in its next report about the situation of risk of the beneficiaries María Elena Soler de Gutiérrez, Carlos Andrés Gutiérrez Rubiano and Leydi Caterin Gutiérrez Peña; and the measures that, in accordance with this situation of risk, have been put into practice in conformity with [...] the present Order.

[...]
4. The report of August 25, 2008, through which the Republic of Colombia (hereinafter, "the State" or "Colombia") referred to the provisional measures adopted and to the impossibility to make available the evaluation regarding the situation of risk of Maria Elena Soler de Gutiérrez, Carlos Andrés Gutiérrez Rubiano, and Leydi Caterin Gutiérrez Peña, the beneficiaries of the present measures, because they were unable to be contacted.
5. The note of the Secretary of the Court of August 28, 2008, through which the representatives of the beneficiaries of the provisional measures (hereinafter, "the representatives") were asked information regarding the location and the situation of the beneficiaries of the measures.

6. The Order of the President of the Court (hereinafter "the President") dictated on December 3, 2008, through which it was decided to call the parties to a private hearing with the purpose of receiving information about the implementation of the provisional measures.

7. The private hearing was carried out on January 20, 2009, at the seat of the Tribunal.<sup>1</sup> In this hearing, the Vice-President of the Tribunal, Judge Diego Garcia-Sayán, informed the State that it had a time period of thirty days, meaning until February 21, 2009, to present the written report in relation to the implementation of the provisional measures and the points that were the object of debate in the private hearing. At the same time, he indicated to the representatives and to the Inter-American Commission of Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") that they had an additional time period from the receipt of the State's report in order to present the observations that they consider pertinent.

8. The brief of February 20, 2009, through which the State presented a report in response to the request made at the end of the private hearing held in this case (*Supra* Having Seen 7).

9. The brief of March 20, 2009, through which the representatives of the beneficiaries presented their observations to the State's report, in relation to the implementation of the provisional measures ordered in the present case.

10. The brief of April 22, 2009, through which the Inter-American Commission presented its observations about the situation of the beneficiaries that still reside in Colombia.

11. The brief of May 14, 2009, through which the State submitted updated information about the implementation of the present provisional measures.

12. The brief of June 8, 2009, through which the Commission submitted its observations to the State's report (*Supra* Having Seen 11).

#### **CONSIDERING:**

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

2. That Article 63(2) of the American Convention establishes that, in cases of "extreme gravity and urgency, and when necessary to avoid irreparable damage to

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<sup>1</sup> In conformity with Article 6(2) of the Rules, the Court held the private audience with a commission of judges composed of the following judges: Diego García Sayán, Vice-President; Manuel Ventura Robles and Margarete May Macaulay. In this hearing, the following appeared: a) for the Inter-American Commission: Juan Pablo Albán; b) representing the beneficiaries: Rafael Barrios Medinvil, of the Group of Lawyers "José Alvear Restrepo"; Michael Camilleri and Francisco Quintana, of the Center for Justice and International Law (CEJIL); and c) for the State: Carlos Franco, Director of the Presidential Program of Human Rights; Angela Margarita Rey, Director of Human Rights and International Humanitarian Law, Ministry of Foreign Relations; Coronel Efraín Aragón, Coordinator of Human Rights for the National Police; Juana Acosta López, Coordinator of the Institutional Operative Group, Ministry of Foreign Relations; Natalia Salamanca, Advisor to the Board of Human Rights, Ministry of Foreign Relations; and, Diana Bravo, Advisor to the Board of Human Rights, Ministry of Foreign Relations.

persons," the Court can, in the matters under its consideration, adopt the provisional measures that it deems pertinent.

3. That Article 1(1) of the Convention signals the duty of the State Parties to respect the rights and liberties recognized in this treaty and to guarantee their free and full exercise to each person subject to its jurisdiction.

4. That in International Law of Human Rights, provisional measures have a character that is not only cautionary in the sense of preserving a legal situation, but also fundamental to give protection to Human Rights, to the extent that they seek to avoid irreparable damages to persons. The measures are applied as long as the basic requirements of extreme gravity and urgency and of the prevention of irreparable damages to persons are met. In this way, provisional measures transform into a true jurisdictional guarantee of a preventative character.<sup>2</sup>

5. That, in particular, as the Court has previously affirmed, it is the responsibility of the State to adopt measures of security to protect all the persons that are subject to its jurisdiction and this duty is made even more evident in the relationship with those that are connected to processes before supervisory organs of the American Convention.<sup>3</sup>

6. That it is indispensable that provisional measures maintain full effect and produce their effects until the Tribunal orders the lifting of the measures and notifies the State of its decision.<sup>4</sup>

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7. That in conformity with the first operative paragraph of the Order of November 27, 2007, the Court required the State to maintain and to adopt the necessary measures in order to protect the life, integrity, and personal liberty of Mr. Wilson Gutiérrez Soler and eleven of his family members.<sup>5</sup> (*Supra* Having Seen 2).

8. That the State signaled that it did not have information about the location of the beneficiaries of the provisional measures that reside in Colombia, and that neither the

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<sup>2</sup> Cf. *Case of Herrera Ulloa*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of December 6, 2001, Considering fourth; *Matter of James et al.* Order for Provisional Measures regarding Barbados of April 3, 2009, considering sixth; *Matter of Fernandez Ortega*. Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of April 30, 2009, Considering fifth.

<sup>3</sup> Cf. *Case of the 19 Tradesmen*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering seventh; *Case of DaCosta Cadogan*. Provisional Measures regarding Barbados. Order of the Inter-American Court of Human Rights of December 2, 2008, Considering fifth; and *Case of Bamaca Velasquez*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of January 27, 2009, Considering forty-fourth.

<sup>4</sup> Cf. *Matter of Liliana Ortega et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of March 1, 2005, Considering tenth; *Case of Caballero Delgado and Santana*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering sixth; and *Case of Bamaca Velasquez*, *supra* note 3, Considering forty-sixth.

<sup>5</sup> Meaning: María Elena Soler de Gutiérrez, Carlos Andrés Gutiérrez Rubiano and Leydi Caterin Gutiérrez Peña, who reside in Colombia and Kevin Daniel Gutiérrez Niño; Ricardo Gutiérrez Soler, Yaqueline Reyes, Leonardo Gutiérrez Rubiano, Ricardo Gutiérrez Rubiano, Sulma Tatiana Gutiérrez Rubiano, Paula Camila Gutiérrez Reyes and Luisa Fernanda Gutiérrez Reyes; who reside outside of Colombia in accordance with that informed by the representatives and the Order of the Court of November 27, 2007.

Commission nor the representatives remitted information regarding the location and the need for protection of these persons, reasons for which, *inter alia*, the President of the Court resolved to call a private hearing (Supra Having Seen 6).

9. That during the private hearing, the State declared, *inter alia*, that:
- a) it was unable to offer information regarding the location of the beneficiaries, the situation of risk of the beneficiaries nor, as a consequence, of the measures adopted. The State signaled therefore that it will utilize the hearing to receive such information and that it was "willing to take the measures necessary if the [...] Court so considered [it];" and
  - b) in relation to the beneficiaries that reside outside of its territory, "it has no ability to apply these measures in the territory of another State;" even though the State reiterated its willingness to arrive at some agreement to implement the measures if these persons decided to return to Colombia.

10. That during the private hearing the representatives stated, *inter alia*, that:

- a) "both Wilson and his family as well as Ricardo and his family in this moment do not live in Colombia, meaning, they were forced to leave Colombia for reasons of security, they have not decided to abandon their country, and they are persons that want some day to return to live or at least to spend important time in Colombia. [Therefore] [...] it is very important that these measures remain in effect, as established by the Court in its Order of November 2007;"
- b) in relation to "the three family members that still are in Colombia [...] there is a particular sensitivity and distrust of the family toward the State, given the pattern and persecution to which the family was subjected;"
- c) "recently the mother of Wilson Gutiérrez, Mrs. María Elena Soler de Gutiérrez had [...] a complicated situation of security, of which the police and the Mayor of Bogota and of Suba were informed, but without [obtaining] answers," and
- d) in "a short time" they will coordinate "a meeting [with the State, where] the representatives [...] and in particular the Group [of lawyers Jose Alvear Restrepo] commit to assure the attendance of the family members [...] so that [they can] make concrete the measures that may be necessary [...]."

11. That the Commission supported the arguments of the representatives and highlighted that "the State is not questioning if there exists a situation of risk," for which it considers that "it will be pertinent that the Tribunal gave the opportunity to the representatives to comply with the offering [...] to give information about the beneficiaries of the provisional measures that are living in Colombia." The Commission considered, at the same time, that "given that there is an intention already expressed by the beneficiaries that are outside of the country to eventually return to Colombia, [...] it is pertinent, in the terms that the Court itself has determined, to maintain these measures for when they return."

12. That in its report presented prior to the holding of the hearing, the State expressed, *inter alia*, that:

- a) it is not clear if Carlos Andrés Gutiérrez Pubiano and Leydi Caterin Gutiérrez Peña, both children of Ricardo Gutiérrez Soler, still reside in Colombia although the representatives, during the hearing, said that neither Wilson Gutiérrez Soler and his family, nor Ricardo Gutiérrez Soler and his family currently live in Colombia;
- b) the “presumed incident [against María Elena Gutiérrez de Soler] was never notified to the Ministry of Foreign Relations[, the entity charged with following the fulfillment of the provisional measures,] nor neither was it mentioned in any agreement scenarios regarding these measures.” To date, the State has not been informed of this “nor of any other situation of risk or threat against the beneficiaries,”
- c) due to the lack of coordination for the holding of the meeting to which the representatives committed to during the hearing, the State directed a communication to the Group of Lawyers “José Alvear Restrepo,” on February 13, 2009, “reminding him of his promise and of the need to catch up with the it so that the process of agreement of the implementation of the measures can be sped up,”
- d) regarding the beneficiaries that reside outside of Colombia, there has been no notification on the part of the petitioners and/or beneficiaries of their entry into the country so that the measures can be implemented. This occurred although – for example – the report of January 17, 2009, from the Sub-Board of Immigration Matters of DAS indicated that both Wilson as well as Ricardo Gutiérrez Soler had entered and exited the country in previous years,” and
- e) “the provisional measures include a temporary character that cannot be unobserved, making the measures last indefinitely within the time causing their denaturalization [...]. The maintenance of the present measures in the hope that the beneficiaries return to the country does not have any support in the nature of the provisional measures; therefore this will entail the assumption that when they return they will face a hypothetical situation of extreme gravity and urgency, which is not possible to reasonably affirm or establish.”

13. That in their brief of observations to the report of the State, the representatives maintained, *inter alia*, that:

- a) They have repeatedly shown that María Elena Soler, Carlos Andrés Gutiérrez and Leydi Caterin Gutiérrez are the only beneficiaries that remain in Colombia;
- b) The new fact relative to the security of Mrs. María Elena Soler “was notified in a timely manner to the authorities of the State of the local area [...]. Although the Board of Human Rights of the Ministry of Foreign Relations is the entity that conducts the following of the Provisional Measures, the present case was not an unknown or ignored event by the State that impeded its effective action;”
- c) the entry into Colombia of the beneficiaries “under ‘low profile’ obeys a measure of self-protection originated in the profound sense of prevention, added to the feeling of fear and lack of legal protection sown in the members of the Gutiérrez Soler family” toward the state institutions;
- d) “It cannot escape the attention of the Court that the institution that [...] conducted the following of the (immigration) movements of Wilson and Ricardo Gutiérrez Soler is the Administrative Department of Security (DAS) [...]. In recent years, this institution that principally carries out works of intelligence has been plagued by corruption scandals and infiltration by part of

the mafias and paramilitaries. [...]. In this context, it is extremely worrisome, taking into account as well the legal regime of hiding the information of DAS and the history of persecution that the Gutiérrez Soler family has suffered at the hands of the Colombian police force, that the State Department went to DAS to perform the monitoring of the movements of Wilson y Ricardo Gutiérrez Soler;"

- e) The State must "maintain in effect the provisional measures in favor of all the beneficiaries, without prejudice to their place of residence" in the measure that "the beneficiaries have not abandoned their country permanently, and some of them want to return to spend important time in Colombia in the near future, [with] conditions of security" and
- f) "the 'provisional' character of a measure does not imply that it must be lifted after a certain time period, and the Court counts on greater elements to establish affirmatively that the grave and urgent risk initially proven, [...] does not exist anymore."

14. That the State informed that it had held a meeting on April 15, 2009, in which the representatives of the beneficiaries and Mr. Wilson Gutiérrez Soler were present, with the goal of addressing two principal matters: i) the notification to the authorities in charge of offering protection to the beneficiaries of the measures about the temporary entrances into Colombia by Mr. Wilson Gutiérrez; and ii) the diligence of protection that will be adopted to implement the provisional measures ordered by the Court. In this respect, the State indicated that it agreed with the representatives of the beneficiaries that they would inform the Board of Human Rights of the Ministry of Foreign Relations promptly of the temporary returns that the beneficiaries make to Colombian territory, with the purpose of guaranteeing their protection and security. Also, the State signaled that it coordinated with Mr. Gutiérrez Soler and the representatives regarding the necessities of protection in order to make a request to the Committee of Regulation and Evaluation of Risks (CRER) regarding the same. Subsequently, said committee recommended the ratification of the measures adopted through procedures of urgency for Mrs. María Elena Soler Gutiérrez,<sup>6</sup> as well as to offer measures for the temporary entrance into Colombia of Mr. Gutiérrez Soler<sup>7</sup> and measures of protection in the eventual case that Mr. Wilson Gutiérrez<sup>8</sup> decides to establish residence again in Colombia. The State indicated, finally, that the request for information put forth by the State Department to the Sub-Board of Migration Issues of the Administrative Department of Security DAS, with the purpose of knowing the location of Mr. Gutiérrez Soler, "tended to establish the location of the beneficiaries in order to procure the fulfillment of that which was ordered by the [...] Court in its Order of November 27, 2007; [...] it did not [have] as its purpose to develop a work of intelligence about the beneficiaries, *a contrario sensu*, the information obtained had a official destination that observed the legal dispositions and jurisprudential considerations aforementioned."

15. That this Tribunal appreciated that the parties involved in the adoption of the present provisional measures have put forth efforts of mediation and coordination for the effective implementation of the measures. The attitude of the parties involved in the present matter, demonstrated previously by the private hearing held (*Supra* Having Seen

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<sup>6</sup> The measures ordered consist of: a support for temporary relocation, a means of cellular communication, and a support for moving.

<sup>7</sup> The measures to implement in the case of the temporary returns of Mr. Wilson Gutiérrez are: support for land transportation, a means of cellular communication, and a bullet-proof vest.

<sup>8</sup> The measures in the case of a eventual permanent return to Colombia consist of: an armored scheme and armor for the residence, prior study of security and risk level, adjusting to the required basics.

14), reveals the sense and reach of the provisional measures of protection ordered by this Tribunal and the appropriateness of its good efforts. Regarding the procedures of the provisional measures, the disposition of the parties is necessary for the suitable coordination of the measures, with full participation of the beneficiaries in the determination of the risks and the measures to reduce those risks.

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16. That this Tribunal is concerned with analyzing two situations in the present measures to evaluate whether they should be maintained: a) the situation of the persons that reside outside of the territory of Colombia, meaning: Wilson Gutiérrez Soler, Kevin Daniel Gutiérrez Niño, Ricardo Gutiérrez Soler, Yaqueline Reyes, Leonardo Gutiérrez Rubiano, Ricardo Gutiérrez Rubiano, Sulma Tatiana Gutiérrez Rubiano, Paula Camila Gutiérrez Reyes and Luisa Fernanda Gutiérrez Reyes; and b) the situation of the persons that reside within Colombian territory, meaning: María Elena Soler, Carlos Andrés Gutiérrez Rubiano and Leydi Caterin Gutiérrez Peña. The aforementioned must make an agreement regarding the situation of extreme gravity and urgency in order to avoid irreparable damages to their rights to life, integrity, and personal liberties, as dictated in the Order of November 27, 2007 (*Supra* Having Seen 3).

17. That as an end to maintain the provisional measures ordered in this matter, it is necessary that the situation accredited with extreme gravity and urgency, and necessary to avoid irreparable damages have validity, as well as a direct relationship with the acts that motivated the granting of the provisional measures in the present case,<sup>9</sup> for which, before the requirements of the Court to evaluate the maintenance of the measures, such information must be duly accredited and based.<sup>10</sup>

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18. That in relation with the persons that reside outside of the territory of Colombia, the representatives have repeatedly informed of the will of some of the beneficiaries to return to the country. This has been valued by this Tribunal in previous occasions with the purpose of maintaining in effect the provisional measures ordered in the present matter.

19. That previous to the meeting held between the state authorities, the representatives, and Mr. Gutiérrez Soler (*Supra* Considering 14), the State informed and reiterated, in a general manner, its promise to adopt measures of protection during the temporary returns made by the beneficiaries to Colombian territory; for this, there is a need that the beneficiaries inform the authorities charged with the implementation of the measures properly and with sufficient anticipation of their return. Also, the State

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<sup>9</sup> Cf. *Case of the Constitutional Court*. Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of March 14, 2001, Considering thirteenth; *Matter of Leonel Rivera et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of November 25, 2008, Considering twenty-third; and *Case of Lopez Alvarez et al.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of January 26, 2009, Considering twenty-fifth.

<sup>10</sup> Cf. *Case of Lopez Alvarez et al.*, *supra* note 9, Considering twenty-fifth.

indicated that in the event that Mr. Gutiérrez Soler decides to return permanently to Colombia, particular measures of protection will be adopted (*Supra* Considering 14).

20. That the Court recognizes and values the agreement submitted by the State in the present matter (*supra* Considering 14). This Tribunal affirms that the State's report referred in a timely manner to the measures of protection designed for Mr. Gutiérrez Soler, in relation to his eventual returns to Colombia. Nevertheless, the report referred to does not contain detailed information regarding the other beneficiaries that reside outside of Colombian territory (*supra* Having Seen 3 and Considering 16); nor does any reference exist regarding the methods of implementation that will be adopted respecting each one of them.

21. That notwithstanding the aforementioned, based on the expressed will of the State, both in the private hearing held (*supra* Considering 9) as well as in the previous report to the hearing (*supra* Considering 14), this Tribunal assumes that the will to offer protection to the beneficiaries covers each and every one of them, in the event that they temporarily return to Colombia and until the Court is informed about the overcoming of the situation of extreme gravity and urgency. For this, the beneficiaries, their representatives, and the State must agree upon the measures and methods of protection in relation to each one of the beneficiaries.

22. That the maintenance of the present measures deals with the promises, made in good faith, that have been reached by the State and the beneficiaries. At the same time, this Tribunal has affirmed that the method of implementation of any measures (*Supra* Considering 14) has been designed in coordination and with the participation of the beneficiaries. In light of these agreements and in the particular context of the present matter, the provisional measures must be maintained in order, to be implemented when the beneficiaries are within the territorial jurisdiction of the State.

23. That the notification to the State of the temporary entrances into Colombian territory of Mr. Wilson Gutiérrez Soler and the other beneficiaries that reside outside of the Colombian territory is essential in order to achieve the material effectiveness of the present measures and to meet the will manifested by the State institutions and the beneficiaries (*Supra* Considering 14).

24. That the Court reaffirmed the obligation of the State to respect the rights and liberties recognized in the Convention and to guarantee the free and full exercise of those within its jurisdiction, conforming to Article 1(1) of such treaty. This implies that the State must guarantee the adequate means for the protection of the beneficiaries through the internal mechanisms that for such effects exist, in accordance with that offered by the State (*supra* Considering 9 and 14).

25. That, for all the aforementioned, this Court considers that the provisional measures ordered must be maintained in favor of Wilson Gutiérrez Soler, Kevin Daniel Gutiérrez Niño, Ricardo Gutiérrez Soler, Yaqueline Reyes, Leonardo Gutiérrez Rubiano, Ricardo Gutiérrez Rubiano, Sulma Tatiana Gutiérrez Rubiano, Paula Camila Gutiérrez Reyes and Luisa Fernanda Gutiérrez Reyes (*supra* Considering 21). The Court reaffirms that the representatives must notify the State with due anticipation of the entrance of Mr. Wilson Gutiérrez Soler into the country and of any other beneficiary, so that the measures of protection agreed up in their favor can be implemented (*supra* Considering 14 and 23). As a consequence, the Court requires that the beneficiaries, their representatives, and the State inform the Tribunal of the methods of fulfillment in order

to make effective the present provisional measures when temporary returns to Colombia on the part of the beneficiaries take place. For this, the Tribunal requests the State to present information about this point in the next State report that is submitted to the Tribunal. Likewise the Tribunal solicits the representatives to refer particularly to this point in their written observations.

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26. That respecting the situation of the persons that reside in Colombia, meaning: María Elena Soler, Carlos Andrés Gutiérrez Rubiano and Leydi Caterin Gutiérrez Peña, the proportioned information during the private hearing and in the previous briefs is not clear nor sufficient in order to deduce which will be the circumstances of extreme gravity and urgency and of suffering irreparable harm. Notwithstanding the aforementioned, the Court observes that the State and the representatives reached an agreement about the measures of protection to be offered in favor of these persons. In particular, it is observed that the Committee of Regulation and Evaluation of Risks (CRER), an entity of State character, recommended that the measures of protection be ratified for Mrs. María Elena Soler Gutiérrez (*supra* Considering 14).

27. That, taking into account the aforementioned, the Tribunal considers it timely to maintain the present provisional measures in relation to the beneficiaries that reside in Colombia, meaning: María Elena Soler de Gutiérrez, Carlos Andrés Gutiérrez Rubiano and Leydi Caterin Gutiérrez Peña. The Court will evaluate and will supervise the effectiveness of the measures of protection accorded between the State and the representatives of the beneficiaries in relation with those that reside in Colombia, for which it hopes that the information presented and the observations of the parties in this respect refer to this point in detail. In this respect, it is fitting to reiterate that regarding a matter of provisional measures, it follows that the Court will consider only and strictly those arguments that relate directly with extreme gravity, urgency, and the need to avoid irreparable damages to persons.<sup>11</sup>

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28. That respecting the obligation to investigate the acts that originated the present measures, the representatives signaled that "the best way to evaluate the risk and to know if it still exists or not in a determined case is through the explanation of the acts that provoked the *prima facie* assessment of a grave and urgent risk." Likewise, they indicated that, "the analysis of the investigations that are carried out regarding provisional measures is an analysis focused exclusively in determining if as a product of the investigation it can be concluded that there now does not exist the risk that gave place to the measures."

29. That the investigation of the acts that originated the present provisional measures are understood in the inquiries that must be carried out by the State authorities in

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<sup>11</sup> Cf. *Matter of James et al.* Provisional Measures regarding Trinidad & Tobago. Order of the Court of August 29, 1998, Considering sixth; *Matter of Luis Uzcategui.* Provisional Measures regarding Venezuela. Order of the Court of January 27, 2009, Considering twenty-first; and *Matter of Fernandez Ortega et al.*, *supra* note 2, Considering eighteenth.

fulfillment with the operative paragraph of the judgment of merits, reparations, and costs of September 12, 2005, issued by the Court in this present case.

30. That, in any case, conforming to Article 1(1) of the American Convention, the State has the general obligation to respect the rights and liberties recognized therein and to guarantee their free and full exercise to each person subject to its jurisdiction.<sup>12</sup> As a consequence, independent of the existence of specific provisional measures, the State is especially obligated to guarantee the rights of the persons in situations of risk and must promote the necessary investigations in order to clarify the acts, following the consequences that pertinent legislation establishes.<sup>13</sup>

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31. That this Tribunal emphasizes that it repeatedly solicited information about the situation of risk and the location of the beneficiaries from the representatives, a request that refers to all the beneficiaries. In order to obtain such information, the Secretary of the Tribunal, following the instructions of the President, through the notes of August 1, 2008 and August 22, 2008, reiterated the request for information. Likewise, the Order of the President of the Court of December 3, 2008, called a private hearing for such end and previous to this, an agreement of compromise assumed by the representatives required concrete and detailed information about the totality of the beneficiaries and their situation. Regarding the aforementioned, the Court observed that partial information exists regarding the situation of risk of the beneficiaries and their location. As a consequence, the Court requests that the information offered by the parties in the future refer to all the beneficiaries in a detailed manner, particularly that which, is remitted by the beneficiaries, and their representatives who better know the situation.

**THEREFORE,**

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

pursuant to the authority conferred by Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure,<sup>14</sup>

**DECIDES:**

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<sup>12</sup> Cf. *Case of Velasquez Rodriguez*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, Considering third; *Matter of Carlos Nieto Palma et al.*, *Supra* note 2, Considering twenty-second; and *Matter of Fernandez Ortega et al.*, *supra* note 2, Considering fourth.

<sup>13</sup> Cf. *Case of Velasquez Rodriguez*. Provisional Measures regarding Honduras. Order of the Court of January 15, 1988, Considering third; *Matter of Carlos Nieto Palma et al.*, *supra* note 10, Considering twenty-second; and *Matter of Fernandez Ortega et al.*, *Supra* note 2, Considering fourth.

<sup>14</sup> Rules approved by the Court in its XLIX Ordinary Period of Sessions, held November 16-25, 2000 and partially reformed during the LXXXII Ordinary Period of Sessions, held January 19-31, 2009, in conformity with Articles 71 and 72 of the same.

1. To require the State of Colombia to maintain any measures it has adopted to protect the life and personal integrity of Wilson Gutiérrez Soler, Kevin Daniel Gutiérrez Niño, Ricardo Gutiérrez Soler, Yaqueline Reyes, Leonardo Gutiérrez Rubiano, Ricardo Gutiérrez Rubiano, Sulma Tatiana Gutiérrez Rubiano, Paula Camila Gutiérrez Reyes, Luisa Fernanda Gutiérrez Reyes, María Elena Soler de Gutiérrez, Carlos Andrés Gutiérrez Rubiano and Leydi Caterin Gutiérrez Peña in conformity with that provided in Considering paragraphs 18 to 27 of the present Order.
2. To require the State of Colombia to allow the participation of the beneficiaries or their representatives regarding the planning and implementation of the measures of protection and that, in general, to keep them informed about the advance of the provisional measures dictated by the Inter-American Court of Human Rights.
3. To require the State of Colombia to continue informing the Inter-American Court of Human Rights each three months regarding the provisional measures adopted and to require the representatives of the beneficiaries of the provisional measures and the Inter-American Commission of Human Rights to present their observations to the State's report within four and six months of its notification, respectively.
4. To require the Secretary of the Court to notify this Order to the Inter-American Commission on Human Rights, the representatives of the beneficiaries of these measures, and the State.

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