

**Order of the
Inter-American Court of Human Rights
of November 19, 2009
Provisional Measures regarding Colombia
Case of the Rochela Massacre**

HAVING SEEN:

1. The Judgment of merits, reparations, and costs delivered by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court," or "the Tribunal") on May 11, 2007.
2. The brief of the representatives of the victims (hereinafter "the representatives") of October 24, 2009, and its appendixes, received on October 26, 2009, in which they brought before the Court a request for provisional measures in conformity with Article 63(2) of the American Convention of Human Rights (hereinafter "the Convention" or "the American Convention") and Article 26 of the Rules of the Court (hereinafter "the Rules"), with the goal that the Republic of Colombia (hereinafter "the State" or "Colombia") protect the life and personal integrity of Esperanza Uribe Mantilla, Luz Nelly Carvajal and Paola Martínez Ortiz and their families, who are part of the victims of the Case of the Rochela Massacre.
3. The communication of October 26, 2009, through which the Secretary of the Court, (hereinafter "the Secretary") following the instructions of the President of the Tribunal (hereinafter "the President"), granted the State a time period until October 29, 2009, to give a response regarding said request.
4. The note of November 4, 2009, through which the State, after the time extension, sent a report regarding the request for provisional measures.

CONSIDERING:

1. That Colombia has been a State Party to the American Convention since July 31, 1973, and according to its Article 62, it has accepted the adjudatory jurisdiction of the Court on June 21, 1985.
2. That Article 63(2) of the Convention establishes that in "cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court may, with regard to a it is hearing, order such provisional measures as it deems pertinent".
3. That, in this regard, Article 26 of the Rules of Procedure establishes that:
 1. During any stage of the procedure, as long as regarding cases of extreme gravity, urgency, and when necessary to avoid irreparable damage to persons, the Court, by its own initiative or at the request of a party, may order provisional measures that it considers pertinent, in the terms of 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.

4. That Article 1(1) of the Convention establishes the obligation of the State Parties to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, which are imposed not only in relation to the power of the State but also in relation with actions of third parties.¹

5. That on October 3, 4, and 6, 2009, Paola Martínez Ortiz, Luz Nely Carvajal Londoño and Esperanza Uribe Mantilla, respectively, received at their homes a pamphlet entitled with the acronym "A.U.C." and signed by the "Ágilas (sic) Negras Bloque Capital" group, that signaled that "the past must be left behind" and that they must "think more in those which are and not in those that left."² Also, in these pamphlets were the words "MILITARY OBJECTIVE" (capital letters within the text). In the pamphlet received by Ms. Martínez, it said: "do whatever is possible to enjoy your future grandchild."

6. That the representatives alleged, without presenting any specific proof in this respect, the following harassments and threats related to Ms. Luz Nelly Carvajal:

a. On September 29 and October 3, 2009, she had received "intimidating calls, as well as threats by telephone," where the "speaker did not talk or hung up in the moment she answered." Also, they alleged that in said opportunities she could have identified the numbers sent, but "when investigating into the calls, [they had appeared] as deactivated or permanently busy," and

b. On October 10, 2009, she received a call on her cell phone in which a voice called her by her name and said "stop bothering."

7. That the representatives alleged, without presenting any specific proof in this respect, the following harassments and threats related to Ms. Esperanza Uribe Mantilla:

a. On October 10, 2009, she received a call on her cell phone, in which a "masculine voice" said "Esperanza Uribe Mantilla, this call is with the purpose that you stay quiet, don't talk anymore, if you love your sons, be quiet." An hour later, there was another call with a different voice that said, "Esperanza Uribe Mantilla, I hope that you have clear what I just informed you, if you love your sons, be quiet and don't bother anymore," and

b. In "the past weeks" Ms. Uribe "has been realizing that the trash from her house has been picked through."

8. That the representatives alleged, without presenting any specific proof in this respect, that on October 10, 2009, Ms. Paola Martínez Ortiz also received a call

¹ Cf. *Case of Velásquez Rodríguez. Provisional Measures respecting Honduras*. Order of the Court of January 15, 1988, Considering thirteenth. *Matter of Carlos Nieto Palma et al. Provisional Measures respecting Venezuela*. Order of the Court of January 26, 2009, Considering twenty-second, and *Matter of Fernández Ortega. Provisional Measures respecting Mexico*. Order of the Court of April 30, 2009, Considering fourth.

² Cf. Appendix to the report inserted by Paola Martínez Ortiz before the Office of Assignments of the Prosecutor General on October 5, 2009 (case file of provisional measures, volume I, page 13); Appendix to the reports inserted by Luz Nelly Carvajal Londoño before the Office of Assignments of the Prosecutor General of the Nation on October 5, 2009 (case file of provisional measures, volumen I, page 14), and appendix to the report inserted by Esperanza Uribe Mantilla before the Office of Assignments of the Prosecutor General of the Nation on October 7, 2009 (case file of provisional measures, volumen I, page 15).

"approximately at the same time" as Ms. Carvajal and Ms. Uribe, in which a masculine voice said "Didn't you understand the message, old SoB stop bothering."

9. That the representatives considered that these threats "have placed the victims and their next of kin in a state of permanent terror and anxiety." According to them, even though the State has developed some actions, "it has not provided permanent, structural, and efficient measures that allow a response to the situation of threat." It has resulted that the "threats, harassments, and following warnings are registered in the context of advances in judicial processes [of investigation of the massacre] that have been produced this year," as well as in the "visibility that the next of kin of the victims have acquired" due to "the television programs on which they have participated recently that emphasize the connection to the criminal process of the ex-employees of the State, among those generals of the National Army, who are presumably involved in the planning, development, and execution of the massacre." In the same way, they reiterated that "there exists a risk that similar acts continue to happen and is also extended to other next of kin." They added that the threats received came from self-designated "Aguilas Negras" (Black Eagles) groups, which are "structures that correspond to the actual phase of rearmament and configuration of the paramilitary groups."

10. That the representatives informed that previously they had presented acts of harassment against Ms. Martinez, Carvajal and Uribe. In this respect, they indicated, without providing proof in this respect, that:

a. on September 28, 2005, before the public act of recognition of partial State responsibility for the acts of the *Massacre of La Rochela*, some men that were unidentified were asking for Ms. Martinez and Carvajal;

b. on February 2, 2006 Ms. Uribe, Carvajal and Martínez had been "harassed" by a person that was taking them pictures and two youngsters that walked around them and looked at them insistently. Afterwards, a man had looked at them defiantly, and after that he met a person that looked very alike the one that had taken them pictures;

c. on February 27, 2006, when Ms. Uribe arrived at her apartment, she perceived "a red-wine colored vehicle that appeared to be watching her." Weeks later, at her place of work, she received a call in which a masculine voice said that they "were to cut the little chain;"

d. on December 1, 2007, a daughter of Ms. Carvajal had been attacked in the street by a man that sprayed her face with pepper gas, which led to her being incapacitated for several days, and

e. on December 31, 2007, Ms. Carvajal had received a call to her cellular number, in which a "choked" masculine voice had said: "we are going to kill you." As a consequence of these acts, Ms. Carvajal was forced to change of residence along with her family.

11. That the representatives indicated that the respective criminal reports have been presented before the Attorney General of the Nation, but there have still been no news of the assignment of a prosecutor. They added that they had organized meetings with the Board of Human Rights of the National Police, of the Presidential Program of Human Rights of the Vice-Presidency of the Republic, and with the Ministry of Foreign Relations. They signaled as well that "no measures of adequate protection had been adopted in the understanding that, in accordance with the state authorities, the families of the victims of the Massacre of La Rochela cannot be the object of the

Program for Protection of the Ministry of the Interior, nor of the Program of Protection to victims of the public prosecutor's office, because they were not part of a criminal process, nor of the measures in favor of the operators of justice, unless the three victims were workers of the Attorney General of the Nation."

12. That the State did not present specific proof of any kind. Nevertheless, the State informed regarding the criminal investigation that had been initiated by the Attorney General of the Nation in relation with the threats mentioned. The State specified that the investigation had been assigned to diverse units of the Prosecutor (units 330, 209, 32 and 125). Also, the State maintained that the public prosecutor's office made a "re-evaluation of threat and risk" regarding Ms. Martinez, Carvajal and Uribe, and the results were presented "in the following days" and regarding which the Office of Protection and Assistance of the Attorney General adopted "the decision that it was pertinent." Also, the Board of Protection and Special Services of the National Police had been in charge of executing "technical studies on the level of risk and threat" to the women mentioned. Likewise, Colombia informed that the Metropolitan Police of Bogota had made police rounds for a period of one month at the place of residence of the women.

13. That the State informed that it made available a "direct [l]ink with the National Police" with the goal that the victims "could contact them in case of an emergency through their cellular phones." Also, they had facilitated contact numbers of the person in charge of the Police Station in the respective zone and the telephone numbers of the Coordinator of the Group of Human Rights of the National Police. Finally, the State "reject[ed] all the acts of intimidation" that occurred.

14. That Article 63(2) of the Convention demands that for the Court to grant provisional measures, three conditions must concur: i) "extreme gravity," ii) "urgency," and iii) when necessary to "avoid irreparable damage to persons." These three conditions are co-existing and must be present in each situation in which the intervention of the Tribunal is sought. In the same way, the three conditions described must persist for the Court to maintain the protection ordered. If one of them is no longer in effect, the Tribunal will again evaluate the pertinence of continuing with the protection ordered.

15. That the standard of interpretation of a *prima facie* case and the application of presumptions before the necessities of protection have led this Court to order measure in distinct occasions.³ Nevertheless, with the goal of maintaining the measures, it is necessary that the situation of extreme gravity, urgency, and the need to avoid irreparable damage subsists,⁴ for which, before the requirements of the Court to evaluate the maintenance of the same, said information must be duly accredited and founded.

16. That the pamphlets received by Ms. Martinez, Carvajal and Uribe in October of 2009, in which a military objective by an illegal armed group is declared, constitute a situation that generates extreme gravity and urgency of risk for the life and personal

³ Cf. *Case of Caballero Delgado and Santana. Provisional Measures regarding Colombia*. Order of the Court of December 7, 1994, Considering thirteenth; *Matter of Kawas Gernandez. Provisional Measures respecting Honduras*. Order of the Court of December 12, 2008, Considering ninth, and *Case of Mack Chang et al. Provisional Measures regarding Guatemala*. Order of the Court of January 26, 2009, Considering thirty-second.

⁴ Cf. *Matter of Millacura Llaipén and other. Provisional Measures regarding Argentina*. Order of the Court of February 6, 2008, Considering twenty-second; *Case of Carlos Nieto Palma et al. Provisional Measures regarding Venezuela*. Order of the Court of August 5, 2008, Considering sixteenth, and *Case of Mack Chang et al.*, *supra* note 3, Considering thirty-second.

integrity of said persons, for which it is pertinent to order measures of protection in their favor.

17. That the information regarding the risk of the next of kin of the women mentioned is still insufficient and only counted with the general mention of the attack suffered by the daughter of Ms. Carvajal and the mention of the grandson of Ms. Martinez in the pamphlet that threatened death on October 3, 2009. Therefore, the Tribunal will valueate its pertinence after learning of the risk studies that currently are being carried out by the state institutions.

18. That the State must carry out the pertinent steps so that the provisional measures ordained in the present Order are planned and applied with the participation of the beneficiaries of the same or their representatives, in such a way that the measures referred to are offered in a diligent and effective manner.

NOW 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 26 and 30 of its Rules of Procedure,⁵

DECIDES:

1. To require the State to adopt immediately the measures necessary to protect the life and personal integrity of Ms. Paola Martínez Ortiz, Luz Nelly Carvajal Londoño, and Esperanza Uribe Mantilla.

2. To require the State to carry out all the pertinent steps for the ordained measures of protection in the present Order to be planned and implemented with the participation of the beneficiaries of the same or their representatives, in such a way that the measures referred to are offered in a diligent and effective manner and that, in general, to keep the Court informed about the advancement of their execution.

3. To require the State to inform the Court, no later than January 20, 2010, about the steps that it has taken to implement the provisional measures that this Order has ordained and to continue informing the Court with respect to the measures each two months.

4. To request the representatives of the beneficiaries of the present measures and the Inter-American Commission on Human Rights to present their observations to the State's reports referred to the previous resolution point, in a time period of four and six weeks, respectively, beginning from the notification of the same.

⁵ Rules approved by the Court in the XLIX Period of Ordinary Sessions, held November 16-25 of 2000 and partially reformed during the LXXXII Period of Ordinary Session, held January 19-31, 2009, in conformity with Articles 71 and 72 of the same.

5. 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 to the Republic of Colombia.

Diego García-Sayán
President in exercise

Sergio García Ramírez

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President in exercise

Pablo Saavedra Alessandri
Secretary