

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 28, 2010**

**REQUEST FOR PROVISIONAL MEASURES BY
THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
REGARDING THE REPUBLIC OF PANAMA**

FOUR NGÖBE INDIGENOUS COMMUNITIES AND THEIR MEMBERS

HAVING SEEN:

1. The brief of the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) of January 19, 2010, whereby it submitted to the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) a request for provisional measures, in conformity with Article 63(2) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Article 27 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), whereby it “request[ed] t[he Court to] require [the] State of Panama [to] adopt forthwith all measures necessary to:

1. [p]rotect the life and humane treatment of the members of the Ngöbe indigenous communities: Charco [L]a Pava, Valle del Rey, Guay[a]bal and Changuinola Arriba[;]

2. [s]uspend the construction works and other activities related to the concession granted to AES-Changuinola along the Changuinola River in the province of Bocas del Toro, until the organs of the Inter-American System of Human Rights reach a final decision on the matter raised in this case [...]

3. [a]bstain from restricting in an allegedly illegal manner the right to freedom of movement of the members of the Ngöbe indigenous communities: Charco [L]a Pava, Valle del Rey, Guay[a]bal and Changuinola Arriba[, and]

4. [p]rotect the special relationship of the Ngöbe indigenous communities: Charco la Pava, Valle del Rey, Guay[a]bal and Changuinola Arriba with their ancestral territory, especially protect the use and enjoyment of collective property and the existing natural resources, and adopt measures intended to avoid immediate and irreparable damages resulting from the activities of third parties entering the community’s territory or exploiting the existing natural resources, until the organs of the Inter-American System of Human Rights have adopted a final decision on this matter.

2. The communication of January 21, 2010, whereby the Secretariat of the Court (hereinafter "the Secretariat"), following the instructions of the President of the Court (hereinafter "the President"), and in conformity with Article 27(5) of the Rules of Procedure, requested the State of Panama (hereinafter "the State" or "Panama") to submit its observations on this request (*supra* Having Seen 1), as of January 29, 2010, at the latest.

3. The communication of January 29, 2010, whereby the State submitted its observations on the request for the adoption of provisional measures (*supra* Having Seen 1).

4. The Secretariat's note of February 1, 2010, whereby, following instructions of the full Court, it requested the State to submit, within a non-extendable term up to February 3, 2010, information regarding: i) the alleged, current or imminent flooding of the areas where the members of the Ngöbe communities currently live, and ii) more detail regarding "the 78% conformity of the community members" of the Ngöbe indigenous people with the "Plan Global de Reasentamiento" (Global Resettlement Plan), including information on the negotiations that led to the agreement signed on February 4, 2010. Additionally, and within the same term, it required the Inter-American Commission to submit its observations regarding those issues.

5. The briefs of February 3, 2010, whereby the Inter-American Commission and the State submitted, respectively, their responses to the Court's questions (*supra* Having Seen 4).

6. The Secretariat's note of February 5, 2010, whereby, following the instructions of the full Court, the State was requested to submit, within a non-extendable term until March 15, 2010, additional information regarding:

- a) the manner and timeline of the processes to remove the vegetation and flood the land where the Ngöbe indigenous communities are located;
- b) the identification of the communities and/or number of members of the Ngöbe communities who had not signed any agreements with the company and/or the State;
- c) the current situation of those affected by the contamination and explosions in the area, specifically with regards to children, the elderly, and women;
- d) the content of the agreement of February 4, 2010, submitting an official copy of that agreement;
- e) detailed information regarding how the agreements of November 26, 2009, and February 4, 2010, respect the uses and customs in the appointment of representatives and collective decision making by the communities;
- f) whether within the framework of the agreement of November 26, 2009, any possibility of cancelling individual agreements is contemplated;
- g) information regarding the current situation of the appeal for legal protection filed in 2007 before the Supreme Court of Justice;
- h) information regarding the beginning and frequency of the visits that the Department of Health will perform in the area "so as to assess the health conditions of the communities," and
- i) the mechanism contemplated for the Office for Civil Rights to "provid[e] follow up on compliance with all of the agreements and commitments that [were] reach[ed] during the negotiations, in addition to the resettlement project presented."

In the same note, following the instructions of the full Court, and based on the provisions of Article 27(8) of the Rules of Procedure, the Office for Civil Rights was requested to submit, within the same non-extendable term, a report analyzing the potential impact of the current advances in the construction of the Chan-75 hydroelectric project on the rights of the Ngöbe indigenous communities, as well as their institutional assessment of the consultation

processes that have been carried out until now. On the other hand, following the instructions of the full Court, the Inter-American Commission was requested to report, within the same non-extendable term, on the following:

- a) the identification of the potential beneficiaries of the request for provisional measures, taking into account the alleged detriment of 4000 members of communities neighboring Charco La Pava, Valle del Rey, Guayabal and Changuinola Arriba, and
- b) refer to specific facts, if any, related to restrictions to the freedom of movement of the Ngöbe community members in 2009 and 2010.

7. The information and observations presented by the State on March 15 and 27, April 19 and 30, and May 5, 2010. The Commission was requested to present its observations regarding the information submitted by the State.

8. The information and observations presented by the Inter-American Commission on March 15 and 26, April 30, and May 21, 2010.

CONSIDERING THAT:

1. Panama is a State Party to the American Convention since May 8, 1978, and that it recognized the obligatory jurisdiction of the Court on May 9, 1990.

2. 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. The Court has indicated that provisional measures have two characters: precautionary and protective.¹ The precautionary character is related to the framework of international contentious cases, as provisional measures intend to preserve the rights potentially at risk until the controversy is resolved. Their goal is to ensure the integrity and effectiveness of the decision on merits, and to avoid infringement of the rights under consideration, which could render innocuous or have an effect on the *effet utile* of the final decision. Provisional measures therefore allow the State in question to comply with the final decision, and, if applicable, to implement the reparations ordered.² With regards to the protective character, the Court has indicated that provisional measures become a true jurisdictional guarantee of a preventive nature as they protect human rights, to the extent that they seek to avoid irreparable damages to persons.³

¹ Cf. *Case of Herrera Ulloa v. Costa Rica* (“La Nación” Newspaper). Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering four; *Matter of Belfort Istúriz et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of April 15, 2010, Considering six, and *Matter of Giraldo Cardona et al.* Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 2, 2010, Considering three.

² Cf. *Case of Carpio Nicolle et al.* Provisional Measures regarding Guatemala. Order of the Court of July 6, 2009, Considering fourteen; *Matter of Belfort Istúriz et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of April 15, 2010, Considering six; *Matter of Giraldo Cardona et al.* Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 2, 2010, Considering three.

³ Cf. *Case of Herrera Ulloa v. Costa Rica* (“La Nación” Newspaper). Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering four; *Matter of Alvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights

4. In the instant matter there is a petition in process, that was already admitted, for which the report on merits is still pending (*infra* Considering 16). Therefore, it is convenient to perform an analysis of the two dimensions (protective and precautionary) of the provisional measures. The Court calls to mind that for the protective character, as well as for the precautionary character, the three requirements established in Article 63(2) of the Convention must be met in order to grant the provisional measures requested, namely: i) "extreme gravity;" ii) "urgency;" and iii) an attempt to "avoid irreparable damages to persons." These three conditions are coexistent and must be present in every situation in which the Court's intervention is requested.⁴

1. Factual background of the request

5. The alleged facts on which the Commission based its request for provisional measures, in general, are:

a. "in May 2007 the National Environmental Authority (Autoridad Nacional del Ambiente, hereinafter "ANAM") approved a 20-year concession" within the "Bosque Protector Palo Seco" (Palo Seco Protection Forest) to the company AES-Changuinola, for the construction of a series of hydroelectric dams along the Teribe-Changuinola River." The first of the series of dams whose construction was authorized was named "Chan-75;" it is under construction since January 2008, and it will flood the place where the "four communities" are established, which "are comprised of 1500 to 2000 people." "In addition, members of neighboring communities such as Nance de Riscó, Valle de Riscó, Guayacán and Bajo la Esperanza, with an approximate population of 4000 people, would be 'affect[ed].'"

b. "if the provisional measures are not granted," the project "will be completed during the next year." The Commission highlighted that "by then the four Ngöbe communities," the beneficiaries, "will have been displaced and relocated in new settlements, which is an element of extreme gravity and urgency." The Commission emphasized that "provisional measures" constitute an "essential measure to preserve the existence of the four communities;"

c. "the Ngöbe of [these] communities [...] hold that the lands affected by the dam are part of their ancestral territory[, where] since time immemorial they hunt and fish." They added that since 1959 they have settlements in the area [and that] in spite of having performed a series of steps before the State, it has not given them the title to those lands." The Commission claimed that there were several irregularities in the Environmental Impact Assessment, and that "the State granted the concession to build the dam without consulting with the indigenous communities [allegedly] affected;"

d. in November 2007, "the Ngöbe had pacifically [opposed] to the project" but "were repressed by the police." In addition, "several houses were knocked down with the support of the police;"

of May 26, 2010, Considering four, and *Matter of Belfort Istúriz et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of April 15, 2010, Considering six.

⁴ Cf. *Case of Carpio Nicolle et al.* Provisional Measures regarding Guatemala. Order of the Court of July 6, 2009, Considering fourteen; *Matter of Alvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of May 26, 2010, Considering nine, *Matter of Belfort Isturiz et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of April 15, 2010, Considering seven.

- e. there have been death threats “against the community leaders and those individuals who ha[d] stood out due to their firm attitude against the dam and negotiating with the company,” which have not been adequately investigated;
- f. on January 3, 2008, a demonstration by the Ngöbe was repressed using tear gas and other types of force, and in this context “fifty protesters [were] detained, including three minors;”
- g. on July 3, 4, and 5, 2009, the Community of Charco La Pava “was sieged by security agents, who threatened to evacuate the community by force” and the affected communities were in “grave risk of suffering a violent repression at any time;”
- h. “the Chan-75 dam would flood the four communities,” all of which “would have to be transferred from their current settlements.” The Commission added that the State “has quickly advanced in the construction and flooding;”
- i. Since February 2008 the communities of Charco La Pava and Valle del Rey have experienced inconveniences due to the noise of the construction works and the detonation of explosives, which sometimes was 24 hours a day. They claim grave psychological impact due to this type of explosions, as they generate a situation of a lot of pressure for the communities. The Commission added that Ngöbe families “ha[d] reported that due to the dust generated by the construction machinery around them, several children had started suffering from frequent and intense respiratory illnesses,” “vomiting and diarrhea,” and as consequence of the explosions “the river [was] being contaminated” and that “the presence of fuel and motor oil waste” would “contaminate the fish which are the base of their nutrition” and “any way of getting food (hunting, fishing, or agriculture);”
- j. the communities, especially Charco La Pava, would need to be relocated urgently in view of the unsustainable life conditions suffered, given that they “live surround[ed] by the construction works;”
- k. “the transit of persons of vehicles, whether from the community or not, has been restricted both by AES personnel” and “by the Police, which at times supported the company’s employees in imposing these limitations.” According to the Commission, the restrictions to transit consisted of “open prohibitions on passing from and to the communities, requiring permits –issued by the same company from their offices in Changuinola or in Panama City- to be able to enter the communities, of performing searches, roadblocks, and intrusive questioning of those who try to pass through the existing access roads, and acts of harassment, both by the police and by company employees.” The circulation restrictions would impede “carrying out the traditional patterns of mobility along the ancestral territory for effects of hunting, collecting, and agriculture;”
- l. those who had signed agreements had been subject to “deceitful maneuvers,” “pressure and grave threats” to compel them to accept compensations and resettlements.” The Commission referred to the report of the United Nations Special Rapporteur on the situation of the Ngöbe communities, issued on September 7, 2009, where the Rapporteur, “during his on site visit,” “identified a significant level of discontent among the members of the communities affected by the project,” including certain people who “had signed agreements with the company” because “they had no other option.” The Special Rapporteur emphasized that “there is a clear imbalance between the parties to the negotiation in terms of power, access to information, and capacity,” that “the negotiations promoted by the Company are oriented toward achieving agreements with individual families, not adjusting to the traditional

organization and collective decision-making." The Commission referred to the statements made by two leaders on April 29, 2010, according to which "those who accepted the agreements with the Company and the State, approximately 4000 (four thousand) people, regret doing so, feel cheated, and have been forced to find a place to relocate," that "the resettlement is fiction," and that "they feel threatened and are afraid of being evicted from their land," and

m. the community of Guayabal did not participate in the agreements with the State and the company, and they have expressed in a reiterated and uniform manner their open opposition to any resettlement initiative. On May 21, 2010, the Commission indicated that "during the past few days a camp was set up to perform the felling of the forest related to the construction of the dam," although the ANAM "had not granted the permit to begin the felling." It added that "the farms of Guayabal had not been deforested, unlike those of Charco [...] La Pava, which were deforested in 2008," which is "generating a lot of tension in the community of Guayabal."

6. The State's observations regarding the instant request for provisional measures, in general terms, are:

a. that on August 4, 2009, the creation of a "High-level Commission" to handle the communities' petitions was approved, and it is comprised of High Level Government Employees,⁵ representatives of the communities, representatives of AES Changuinola, "and the Office for Civil Rights, as guarantor of the agreements reach[ed by this] Commission." The State indicated that these agreements are with the communities of Charco La Pava, Valle del Rey, Changuinola Arriba and Nance de Risco, and indicated that on November 26, 2009, a "tri-partite" agreement was reached between the parties that "allows for an individual negotiation between the company and [...] the residents of the communities;"

b. "that it is currently in an advanced stage for the awarding of collective lands." This award process is based on an "Executive Decree" bill that "will declar[e] social interest of awarding the Collective Lands" to the Ngöbe members "that are directly affected by the transfers and relocations known as the settlements of Changuinola Arriba, Charco la Pava, Guayabal and Valle del Rey, as a result of the activities related to the hydroelectric concessions;"

c. on January 3, 2008, the National Police had intervened following the legal protocols, with the "use of non-lethal force", in response to the alleged "intention [of the protesters] to obstruct the roads and the construction works;

d. while "police presence [...] represented unease, [it was] due to the State's duty to ensure the security, life and property of citizens and foreigners, at times when there were conflicts between the Company and the communities, [which have already been] overcome;"

e. the deforestation "would be conducted under the consent of the ANAM, "after conducting environmental impact assessments" and those to execute them "would be mostly [...] people from those communities" who are being trained, and there would be an "inspector of labor security and fauna and flora rescue patrols;"

⁵ Vice-President of the Republic, Minister of Foreign Relations, Vice-minister of the Government and Social Development, representative of the Department of Health, Governor of the Province of Bocas del Toro, Mayor of Changuinola, a member of Parliament, and ANAM representatives.

f. "the closing of the Changuinola river canal is expected to be completed by 2011 and the reservoir process [would be] conducted during a one-month period, depending on the weather conditions." The State indicated that the reservoir would be built in an area that "represents less than 1% of the total area of the 'Protection Forest';"

g. the relocation of the communities would take place "within the same environment, more or less 500 meters from where they were settled" and with "the benefit of ownership of the collective lands," thus they will continu[e] to live in the lands where they have always lived, and w[ill] have access to health, education, roads, work, and the agreed compensations." Also, the State referred to a press conference held in March 2010, with the Office for Civil Rights, in which the leaders of the communities of Charco La Pava and Changuinola Arriba expressed that that communities were satisfied with the agreements signed with the company and the State, as well as the resettlement and the compensations, and that they were awaiting the delivery of the collective lands. Regarding the compensations, the president of the Community Charco La Pava indicated that "the affected communities are being paid" the amount of "twelve million dollars." Regarding the resettlement, the president indicated that "after the reservoir" the remaining lands are "those that [they] want to use" and that they "know that the pieces that remain after the reservoir are the lands that [they] need for the communities." He said that this would be "where the Charco community is, at a location further up from this one;"

h. that "it [had] 99% of the families' agreement with the hydroelectric project," that only "10 families" are "pending the final agreements" and that "the communities, through their accredited representatives, [had] testified that the company had complied with the compensations;"

i. "the Firemen of Panama" require the company "to use internationally recognized security protocols" at the time of the detonations. It assured that "such security protocols are conducted rigorously;"

j. in March 2010, according to assessments by the ANAM, "there w[as] no type of air or water contamination in the area." Also, on April 19, 2010, the State submitted photos of the Changuinola River "where you could see that despite the construction works, the waters remain crystal clear, with native fish." The State indicated that it is "follow[ing] the parameters and recommendations to minimize environmental impact;"

k. "there [is] no police presence in the area where the hydroelectric project is developed, and there is a peaceful and calm environment in the communities." The State added that "since the dialogue began, none of the natives have been deprived of free transit, and there [have been] no violent incidents or reports of harassment to the indigenous people," instead there is "a climate of respect and dialogue with the communities." The State also highlighted that "the restrictions claimed by the petitioners are based on access to the restricted work areas, [...] not to the area where the communities are;"

l. regarding the continuous processes of consultation with the families, the State reported that "in the cases where the families did not master the Spanish language, a Ngöbe translator assisted them." The State claimed that "the recommendations given by the Special Rapporteur were followed [...] establishing [the aforementioned] High Level Commission, to serve the communities and accomplish the signing of the agreements and compensations," and

m. the "individuals cited [by the] petitioners as alleged inhabitants of Guayabal" lack arguments that these individuals "live and carry out their daily, family, and social

tasks in the town Valle de Risco." Also, "Guayabal is not a community but an agricultural area, thus the effects are much lower."

7. According to the report issued on March 12, 2010, by the Office for Civil Rights, by request of the full Court (*supra* Having Seen 6), "the [five] main leaders of the communities related to the development of the hydroelectric project," who represent the communities of Charco La Pava, Valle del Rey, Valle Risco and Changuinola Arriba, expressed their "satisfaction with the agreements reached with the company" and "explained that the relationship with [the latter] had changed." Regarding the compensations, the leaders explained that "they were only waiting to sign agreements with five (5) families of the Guayabal community and two (2) families of Changuinola Arriba." The Office for Civil Rights indicated that the leaders stated that "this inquiry process would have been satisfactory for them" and "assured that the agreements reached regarding the construction of their homes on the resettlement areas and the establishment of compensation amounts agreed with their expectations." The Office for Civil Rights stated that "the leaders explained that all of the points discussed in the negotiations were reported on a weekly basis to the residents of the communities through conferences, so they could learn all of the details and express their concerns." It added that "the Regional Office [had] promot[ed] the performance of medical tours with personnel from the Department of Health" to "address the repeated complaint" regarding "the dust produced by the detonations, the noise produced by the sirens and the detonations" and the "lack of medical attention."

2. Analysis of the alleged extreme gravity, urgency, and irreparability in the instant matter

8. Regarding the requirement of "gravity" for purposes of the adoption of provisional measures, the Convention requires that it be "extreme," that is, at its most intense or elevated degree.

9. The urgent character of the situation subject to the request for provisional measures implies that the risk or threat involved must be imminent, requiring the remediation response to be immediate. The analysis of this aspect corresponds to assessing the timing and duration of the precautionary or protective intervention requested. For example, in a case where the extension of provisional measures was requested, the Court rejected this request because the person took one year to indicate that he had been threatened. In that regard, the Court considered that this situation "questions the 'urgent' nature necessary for the adoption of measures."⁶

10. Regarding damages, there must be reasonable probability that the damages will occur, and it must not involve assets or legal interests that can be repaired.⁷

⁶ Cf. *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*. Provisional Measures and Request for Expansion of Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering twenty-one.

⁷ Cf. *Matters of the Monagas Judicial Confinement Center ("La Pica"), Yare I and Yare II Capital Region Penitentiary Center (Yare Jail), the Penitentiary Center of the Central Occidental Region (Uribana Prison), and Capital El Rodeo I & El Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering three.

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11. The Court has indicated that “although it is true that the events which motivated the request for provisional measures” “do not have to be fully proven, a minimum degree of detail and information is necessary so as to allow the Court to assess *prima facie* a situation of extreme gravity and urgency.”⁸ In this sense, in conformity with the Convention and the Rules of Procedure, the procedural burden of demonstrating this situation *prima facie* falls on the requestor, in this case the Commission. In this regard, in the analysis of the request for provisional measures in the instant case, the Court considers that, regardless of the repeated requests for information requested by the Court (*supra* Having Seen 4, 6, and 7), the Commission failed to prove the following aspects:

- a. the alleged death threats or acts of police repression against the leaders of certain communities, given that there is no precise data after August 2009, that is, after the start of the agreements between the State, the company and the communities;
- b. the problems that would result from the deforestation methodology currently implemented, as well as with regards to the flood that would affect the resettlement of the community’s members;
- c. the apparent conformity expressed by several members of the indigenous communities in relation to the lands offered and, in certain cases, already granted for their resettlement;
- d. the “medical tours” allegedly conducted by the State to avoid the damage that could result from the alleged contaminating impact of the construction of the works, referred to in the report by the Office for Civil Rights. In its report of April 30, 2010, the Commission did not refer to the photographs and information recently submitted by the State with regards to the condition of Changuinola River;
- e. the alleged restrictions to freedom of movement and to the traditional mobility of the members of the Ngöbe community, considering the lack of claims regarding the manner in which the deforestation is performed, and in relation to that recently reported by the State on Changuinola River;
- f. the alleged “deceitful maneuvers”, “serious threats and pressures” to force the members of the communities of Charco La Pava, Changuinola Arriba and Valle del Rey to sign agreements with the State and the company on the compensations and resettlements, after the agreements and negotiations that began in August 2009, and
- g. while the Commission referred to declarations by the leaders regarding their regret of the agreements and claims of deceit and fear (*supra* Considering 5.1), the Commission did not present arguments of serious pressure in the declarations of the leaders of the Communities of Charco La Pava, Valle del Rey and Changuinola Arriba in the press conference held at the Office for Civil Rights and at meetings with that institution (*supra* Considering 6.g and 7) in which, *inter alia*, they had declared agreeing with the project and with the resettlement. The Commission did not develop specific arguments on the report by the Office for Civil Rights (*supra* Considering 7.)

⁸ Cf. *Matter of Children Deprived of Liberty in the “Complexo do Tatuapé” of FEBEM*. Provisional Measures and Request for Expansion of Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering twenty-three.

12. In this regard, the Court considers that the responses and information presented by the State challenge to a high degree certain elements of the initial request presented by the Commission. Also, the Commission, by not presenting arguments relating to certain claims of the State, fails to demonstrate *prima facie* the situation of extreme gravity and urgency of preventing irreparable damage.

13. In addition, specific aspects claimed by the Commission and challenged by the State, such as the validity of the agreements signed, the restrictions on freedom of movement and the extent of the resettlements, seem to refer to the merits of the case. On this point, the lack of claims by the Commission inhibits distinguishing between what is strictly precautionary and that to be decided on the merits of the claim. In this regard, the Court calls to mind that in a request for adoption of provisional measures it cannot consider any argument that is not strictly related with the extreme gravity, urgency and need to avoid irreparable damages to individuals. Any other issue should be resolved within the respective contentious case.⁹

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14. In relation to the community of Guayabal, the Court observes that this community is recognized in the various appendixes and reports presented by the State. In fact, in its report of March 15, 2010, the State indicated that "there are a total of 10 families pending final agreements" among which it mentioned 8 families from the "region of Guayabal." The Court verifies that the State even reported on certain relocation processes regarding the individuals living in that community. The State also included the community of Guayabal in the Executive Decree bill submitted on April 30, 2010, in relation to the communities that would receive collective lands.

15. However, the Commission did not present specific observations on the State's claims that the inhabitants of Guayabal are part of the community of Valle de Risco. In this regard, the Court observes that the community of Valle de Risco is not part of the four communities included in the request for provisional measures presented by the Commission. The Court also notes that the Commission, considering what the State indicated, did not indicate whether the representation of the community of Guayabal is related to the representation of the community of Valle de Risco, which is mentioned in a report issued by the Office for Civil Rights as one of the communities that participates in the negotiation. While testimonies have been presented as well as a press release issued by the "members of the community" indicating their disagreement with the agreements reached by the Government, the company and certain communities, there is also no clear information on the uses and customs of representation, leadership, and decision-making within this community. Therefore, regarding this community, the Commission is unable to show *prima facie* the situation of extreme gravity and urgency of avoiding irreparable damage.

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⁹ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 29, 1998, Considering six; *Matter of Belfort Isturiz et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of April 15, 2010, Considering nine, and *Matter of Eloisa Barrios et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 4, 2010, Considering three.

16. The Court observes that on March 7, 2008, the Inter-American Commission received the first petition and request for adoption of provisional measures in relation to the instant case. The Commission issued precautionary measures in favor of the Ngöbe indigenous communities on June 17, 2009. On August 5, 2009, the Commission approved the corresponding report on admissibility.¹⁰ On January 19, 2010, the request for provisional measures was filed before this Court, almost two years after the initial request for precautionary protection in relation to these events. Given that the request for provisional measures is based on the requirement of urgency, the Court deems that the Inter-American Commission should proceed with greater speed on the decision on this petition. On the contrary, there would be an inconsistency in that the urgency claimed to request provisional measures does not imply an urgent consideration regarding the assessment of merits of the petition.

17. Based on the foregoing, the Court considers that none the requirements established by Articles 63(2) of the Convention and 27 of the Rules of Procedure are present, therefore the request for provisional measures submitted by the Inter-American Commission should be dismissed.

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18. Without detriment to that presented in the paragraphs above, the Court calls to mind that the State has the constant and permanent duty to comply with the general obligations that correspond to it under Article 1(1) of the Convention to respect the rights and liberties recognized therein and to guarantee the free and full exercise of those rights to any individual subject to its jurisdiction.¹¹ Specifically, the Court emphasizes its jurisprudence in the sense that while the American Convention does not prohibit *per se* the issuance of concessions for the exploration or exploitation of natural resources in indigenous or tribal territories, the legitimate restriction to the right of community property demands: i) conducting prior tests on the environmental and social impact; ii) conducting consultations with the affected communities regarding the development projects carried out in the traditionally occupied territories; and, when dealing with large-scale development or investment plans, obtain the free, informed and prior consent of the communities, according to their customs and traditions,¹² and iii) share the reasonable benefits with them.¹³ In addition, a crucial factor to consider is whether the restriction implies a denial of traditions and customs in a way that endangers the subsistence of the group and its members.¹⁴ The obligation to guarantee the effective participation of the members of the communities or indigenous or tribal towns requires the State to accept and provide information, and implies constant communication between the parties. The consultations should be conducted in

¹⁰ Cf. Inter-American Commission of Human Rights, Report 75/09, Petition 286-08, Admissibility, *Ngöbe Indigenous Community and their members in the Changuinola River Valley*, Panama, August 5, 2009.

¹¹ Cf. *Case of Velásquez Rodríguez*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, Considering three; *Matter of Alvarado Reyes et al.* Provisional measures regarding Mexico. Order of the Inter-American Court of Human Rights of May 26, 2010, Considering twelve, *Matter of Belfort Istúriz et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of April 15, 2010, Considering twenty-two.

¹² Cf. *Case of the Saramaka People v. Surinam. Preliminary objections, Merits, Reparations, and Costs*. Judgment of November 28, 2007. Series C No. 172, para. 134.

¹³ Cf. *Case of the Saramaka People v. Surinam*, *supra* note 12, para. 134.

¹⁴ Cf. *Case of the Saramaka People v. Surinam*, *supra* note 12, para. 128.

good faith, through culturally adequate procedures, and with the intention to achieve an agreement.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority granted by Article 63(2) of the American Convention on Human Rights and Articles 27 and 31 of the Rules of Procedure of the Court,

DECIDES:

1. To reject the request for provisional measures filed by the Inter-American Commission on Human Rights.
2. To require the Secretariat to notify the instant Order of the Inter-American Commission on Human Rights and the Republic of Panama.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alesandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary