

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF AUGUST 30, 2010**

PROVISIONAL MEASURES REGARDING COLOMBIA

MATTER OF THE COMMUNITIES OF JIGUAMIANDÓ AND OF CURBARADÓ

HAVING SEEN:

1. The Orders of the Inter-American Court of March 6, 2003, November 17, 2004, March 15, 2005, February 7, 2006, and February 5, 2008. In this last Order the Court resolved, *inter alia*:

1. To reiterate that the State must adopt, without delay, measures which are necessary to protect the life and personal integrity of the members of the communities composed of the Community Council of Jiguamiandó and the families of Curbaradó, beneficiaries of the present measures [...].

2. To adopt measures which are necessary to protect the life and personal integrity of Ligia María Chaverra and Manuel Dennis Blandón, giving full participation to these beneficiaries and to their representative in their design [...].

3. To reiterate to the State of Colombia that it adopt all measures which are necessary to assure that the persons who benefit from the present measures can continue living in the localities they inhabit, without any type of coercion or threat [...].

4. To reiterate to the State of Colombia that it must establish mechanisms for continuous supervision and permanent communication in the designated "humanitarian refuge zones" [...].

5. To reiterate to the State of Colombia that it give participation to all of the representatives designated by the beneficiaries of these measures in the planning and implementation of the same, and that, in general, it keep them informed regarding the advance of the measures enacted by the Inter-American Court of Human Rights.

[...]

2. The Order of the Tribunal of November 17, 2009, through which the Court resolved *inter alia*:

1. [t]o determine that the beneficiaries of the present provisional measures are the members of the 161 families that inhabit the Humanitarian and Biodiversity Zones of Jiguamiandó and Curbaradó, who comprise a plurality of persons, identifiable and determinable [...].

3. The briefs dated June 2 and October 3, 2008, January 14, June 17 and November 17, 2009, and March 15, 2010, by means of which the State reported on the implementation of the provisional measures ordered by the Tribunal, as well as the brief of November 14, 2008 through which the State referred to the death of Mr. Walberto Hoyos Rivas. Additionally, the briefs dated February 19, March 15, and July 12, 2010, through which the State referred to the petition by the representatives of the beneficiaries of the provisional measures (hereinafter "the representatives") regarding the increase the beneficiaries of the same (*infra* Having Seen 4), among others.

4. The briefs dated February 11, September 25, and December 24, 2009, by means of which the representatives presented their observations on the State's reports (*supra* Having

Seen 3). The briefs of March 18 and May 22, 2010, through which they reported regarding alleged situations that have been presented against the members of the “Humanitarian Zones and Biodiversity Zones.” The briefs of October 14 and October 17, 2008, through which the representatives referred to the death of Mr. Walberto Hoyos Rivas. Additionally, the briefs of February 5, 12, 15, 18, and 25, 2010, and May 24, 2010, through which the representatives petitioned the tribunal to increase the beneficiaries of the present provisional measures.

5. The briefs of August 21, 2008, February 20, and August 25, 2009, January 26, April 30, May 14, and June 17, 2010, in which the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission” or “Commission”) remitted its observations regarding the information offered by the State and by the representatives (*supra* Having Seen 3 and 4). The briefs of February 12, and March 12, 2010, through which the Commission presented its observations regarding the representatives’ petition regarding the expansion of these provisional measures (*supra* Having Seen 4).

6. The Order of the Constitutional Court of Colombia issued on May 18, 2010, regarding the “[a]doption of precautionary measures of immediate protection of the fundamental rights of the Afro-Colombian communities of Curvaradó and Jiguamiandó who are victims of forced displacement, in the context of the unconstitutional state of affairs declared in Sentence T-025 of 2004, and of the monitoring orders, in particular of Order Auto 005 of 2009,” remitted to the Tribunal by the Constitutional Court on May 18, 2010.

7. The public hearing held by the Court at its seat in San José, Costa Rica, on May 19, 2010¹

CONSIDERING THAT:

1. Colombia is a State Party to the American Convention on Human Rights (hereinafter “the American Convention”) as of July 13, 1973, and recognized the contentious jurisdiction of the Court on June 21, 1985.

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

¹ The following persons appeared at this hearing: a) for the Inter-American Commission: Karla Quintana Osuna, Advisor; b) *For the representatives of the beneficiaries*: Danilo Rueda and Liliana Ávila, Interecclesial Justice and Peace Commission; María Ligia Chaverra and Enrique Petro Hernández, beneficiaries, and c) *For the State of Colombia*: Carlos Franco, Director of the Presidential Program on Human Rights and International Humanitarian Law; Oswaldo Cuadrado Simanca, Municipal Mayor of Apartadó; Ángela Margarita Rey, Director of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs; Miguel Soto Carreño, Coordinator of the Working Group on Issues of Protection and Information on Human Rights of the Ministry of Foreign Affairs; Natalia Salamanca, Advisor to the Working Group on Issues of Protection and Information on Human Rights of the Ministry of Foreign Affairs; Luz Stella Bejarano, Advisor to the Office of Human Rights of the Ministry of National Defense; Diana Catherine Abaúnza Advisor to the Office of Human Rights of the Ministry of National Defense; Lena Acosta, Advisor to the Office of Black, Afro-descendant, *Raizal*, and *Palenquera* Communities of the Ministry of Justice and the Interior; Brigadier General Jorge Rodríguez Clavijo, Head of the Human Rights and International Humanitarian Law Headquarters of the National Army; Dr. Hernando Castañeda Ariza, Head of the National Unit on Human Rights and International Humanitarian Law of the Prosecutor General’s Office; Dr. Carmen Torres Malaver, Local Prosecutor, employed by the National Directorate of Prosecutors’ Offices of the Prosecutor General’s Office; Lieutenant Colonel John Henry Arango Alzáte, Coordinator of the Human Rights Group of the National Police.

[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. Article 27 of the Rules of Procedure of the Court (hereinafter "the Rules")² establishes, in pertinent part:

1. At any stage of proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, on its own motion, order such provisional measures as it deems appropriate, pursuant to Article 63(2) of the Convention.

2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

4. Article 63(2) of the Convention obligates the State to adopt the provisional measures ordered by this Tribunal, given that the basic legal principle of state responsibility, supported by international jurisprudence, has indicated that States must fulfill their treaty obligations in good faith (*pacta sunt servanda*).³

5. In International Human Rights law, provisional measures are not only precautionary in nature, in the sense that they preserve a legal situation, but fundamentally protective, because they protect human rights inasmuch as they seek to avoid irreparable harm to persons. Provisional measures are to remain effective as long as the basic requirements of gravity and urgency and the need to prevent irreparable harm to persons are met. In this way, provisional measures become a true legal guarantee of a preventative character.⁴

6. Due to its competence, under the framework of provisional measures, the Court should consider only those arguments that relate strictly and directly to the requirements of extreme gravity and urgency and the need to prevent irreparable harm to persons. All other facts and arguments must be raised and analyzed during the consideration of the merits of a contentious case.⁵

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7. The representatives requested that the Court include, as beneficiaries of the present measures: i) "the members of the 8 families," "composed of 31 persons," "belonging to the

² Rules of Procedure of the Court approved in its LXXXV Regular Period of Sessions, held November 16 through 28, 2009.

³ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of June 14, 1998, Considering sixth; *Case of Helen Mack Chang et al.* Provisional Measures regarding Guatemala. Order of the Court of November 17, 2009, Considering second; and *Matter of Guerrero Larez*. Provisional Measures regarding Venezuela. Order of the Court of November 17, 2009, Considering fifth.

⁴ Cf. *Case of "La Nación" Newspaper*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering Fourth; *Matter of Monagas Judicial Confinement Center ("La Pica")*; *Matter of Guerrero Larez*, Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering Fourth, and *Case of Caballero Delgado and Santana*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 3, 2010, Considering fourth.

⁵ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 29, 1998, Considering sixth; *Matter of Guerrero Larez*, *supra* note 3, Considering seventeenth, and *Matter of Alvarado Reyes et al.* *supra* note 3, Considering sixteenth.

community of Llano Rico that has constituted the Humanitarian Zone 'Argenito Díaz,'" as a mechanism of prevention of forced displacement and of protection to avoid irreparable damages to life and personal integrity; and, ii) "the persons who will make up part of the Humanitarian Zone Andalucía Caño Claro on the premises of L[eonel] G[arcía] and G[abriel] A[naya] in the collective territory of Curvaradó," given that "[a]fter 13 years of forced displacement, 6 families composed of 22 persons,"⁶ "traditional inhabitants Andalucía", "were considering settl[ing] in [the] [mentioned] premises," for the protection of life, personal integrity, and territory.

8. In relation to the families that have constituted the Humanitarian Zone "Argenito Díaz," the representatives indicated that the leaders Argemiro Banda, Argenito Díaz and Manuel Serafín Aguilar actively participated in judicial processes for the material restitution of their lands, and that "[d]ue to their participation in these processes, and the promotion of the Humanitarian Zones and the Biodiversity Zones, the community leaders received threats." The representatives noted that "on January 13, [2010], A[rgenito] D[íaz] was assassinated by members of the paramilitary in Curvaradó," an event which caused the forced displacement of the leaders Argemiro Banda and Serafín Aguilar, along with their nuclear families, and which "produced extreme fear and a permanent state of anxiety in the families of Llano Rico." The representatives also indicated that, eventually, the 8 children of Argenito Díaz would return to inhabit the area that carried his name. Regarding the Humanitarian Zone Andalucía Caño Claro, the representatives advised that the families were considering settling in premises which "are illegally occupied," and that, additionally, in the surrounding areas "re-populators are present," "persons alien to the territory who have been brought and installed in Curvaradó by paramilitaries and businesspeople."

9. The representatives referred to the Order of March 6, 2003 issued by the Tribunal in the present matter, by means of which the present provisional measures were ordered, especially to the order given by the Court in the fifth operative paragraph of the same.⁷ In this regard, the representatives expressed that "the risk factors remain for those who wish to return⁸, and that the Humanitarian and Biodiversity Zones "had permitted groups of persons in a condition of displacement and deprived of their traditional residence in the territory to return in a free and voluntary manner to their lands," joining these existing zones, or creating new ones. Therefore, they requested that the Court "explicitly recognize the open character of [said] order regarding the beneficiaries."⁹

⁶ Initially, the representatives had indicated that the families were composed of 21 persons.

⁷ This operative paragraph established: "To require that the State of Colombia guarantee the security conditions necessary so that persons in the communities represented by the Community Council of Jiguamiandó and the families of Curbaradó that have suffered forced displacement to jungle areas or other regions can return to their homes or to the 'humanitarian refuge zones' established by these communities."

⁸ The representatives stated that the risks are shown in: "the presence of armed groups outside the Law;" "the seizure of land carried out by the palm and extensive ranching industries;" "the participation in the judicial processes for the restitution of lands against the palm industry;" "the existence of private security forces;" "the constant designations for belonging to subversive groups," and "the threats and acts of harassment against human rights organizations."

⁹ On this matter, the representatives indicated that there are clear criteria for determining and identifying the persons and families for whom this request was raised, so that they may be considered beneficiaries of the provisional measures, which amount to: "forced displacement from the lands with which they have traditional ties of belonging"; "the voluntary desire to return to the collective territory recognized in the internal regulations of the Lesser Community Council, the recognition of risk factors that constitute the [H]umanitarian Zones and Biodiversity Zones"; and, "their common wager in territorial occupation in conformity with Law 70 of the black communities."

10. Moreover, the representatives requested that the Court recognize “the Humanitarian Zones of Caracolí and Caño Manso” as beneficiaries of the provisional measures, due to the fact that “these groups of families face the same risks and have been victims of grave violations of their rights, [and] they continue to be potential victims of irreparable damages.” The representatives stated that “[t]he members of these communities are traditional and legitimate settlers in the collective territory of Curbaradó and members of the Community Councils, who “were victims of human rights violations and [...] forced displacement.” Regarding the brief dated February 15, 2007, in which the Tribunal based its determination of the universe of beneficiaries of the present provisional measures through the Order of November 17, 2009 (*supra* Having Seen 2), the representatives indicated that these Humanitarian Zones of Caracolí and Caño Manso “were not reviewed” in this brief because “they had not yet been created” and because these “were in a state of displacement.”

11. Additionally, during the public hearing (*supra* Having Seen 7) the representatives reported that there currently exist “5 Humanitarian Zones and 23 Biodiversity Zones” in Curbaradó, and “4 Humanitarian Zones and 8 Biodiversity Zones” in Jiguamiandó, for a total of “211 family groups,” and although in previous submissions the representatives had indicated that there were 161 families, “the history of the proceedings of the measures makes clear that the grave violations which have occurred in the basin area generated serious displacement,” therefore, “the victims of this displacement that wish to return to the rural zone of which they were illegitimately uprooted and who find recourse in the humanitarian zones [...] are in the same situation of risk [...] which merit[s] that the Court also recognize them as beneficiaries of the provisional measures.”

12. The Inter-American Commission considered that the situation described by the representatives regarding the 8 families or 31 persons belonging to the Community of Llano Rico that “would be created as the Humanitarian Zone ‘Argenito Díaz,’” as well as the 22 persons that “are returning to the humanitarian zone of Andalucía Caño Claro,” confirms that “there exists identifiable risk factors with regard to the beneficiaries of the present measures, which demonstrate the criteria of urgency, extreme gravity, and irreparability of harm with respect to said persons.” Additionally, the Commission highlighted diverse factors that it considered “maintain the risk of an eventual irreparable harm to life or physical integrity for the inhabitants of the humanitarian and biodiversity zones,” such as: “the presence of armed groups outside the law, the usurpation of land, the participation in judicial processes for the restitution of land against the palm industry, the existence of private security forces, the constant designations for belonging to subversive groups, the threats and acts of harassment against human rights organizations, and the existence of narco-trafficking routes, among others.”

13. The Commission also notes that this Court has reiterated in its orders that the State must guarantee the security conditions necessary so that, persons in the communities represented by the Community Council of Jiguamiandó, and the families of Curbaradó that have suffered forced displacement to jungle areas or other regions, can return to their homes or to the humanitarian refuge zones established by these communities, by virtue thereof, “the situation and application put forth merits the inclusion of the mentioned families within the present provisional measures.” Regarding the State’s allegation that there is a contradiction among the Court’s orders due to the fact that, on the one hand, 161 families are referred to (*infra* Considering 14), and on the other hand, it was ordered that conditions were created so that the displaced population can return to their land. The Commission considers that in the context of the area, it is clear that there is movement of the population and creation of new humanitarian zone within the vicinity of the Communities of Jiguamiandó and Curbaradó and that, therefore, “the present measures are of a

fluctuating and dynamic nature, which does not make them vague but rather clearly determinable," "as long as there is uniformity of risk factors."

14. The State requests that the Tribunal reject the representative's petition to expand the provisional measures mainly due to its "lack of procedural legitimacy" because "this matter is not under consideration by the Court [...], under the framework of its contentious functions, such as is required by Article 63(2) of the American Convention [...] and in Article 26 of the Court's Rules of Procedure," for which it argues that said expansion "should [be] requested by the Inter-American Commission." Additionally, it warned of the alleged contradiction among the Court's orders due to the fact that, on the one hand, 161 families are referred to, and on the other hand, it was ordered that conditions were created so that the displaced population can return to their land. Moreover, the State petitioned the Court to request that the representatives "specify the names of [the] five [...] self-designated 'Biodiversity Zones,' as well as the exact coordinates of their location, whose members are beneficiaries of the present provisional measures in accordance with the Order of November 17, 2009 (*supra* Having Seen2).

15. During the public hearing (*supra* Having Seen 7) the State asserted that it "accepts the decision of the [...] Court in this matter," and expanded upon its considerations in the following terms: 1) "it is not necessary in Colombia to have or to be a beneficiary of precautionary and provisional measures to have access to protection when there is an evaluation of risk that justifies it"¹⁰; 2) "internal mechanisms should be valued and strengthened, [...] in Colombia the quality of attention to petitions for protection has improved"; 3) the consequences of having limited these measures during 2009 to the 161 families when there had been other families that requested these measures, and now expanding them," could "have given the sense or impression of a discriminatory attitude." The State also expressed its willingness to cooperate with beneficiaries of the measures, and it petitioned the Tribunal to "limit the scope of the measures to the conditions for exercising the rights and liberties by the 161 beneficiary families" and expressed its intention "to maintain both the mechanisms of protection as well as the mechanisms of guaranteeing the internal rights of this community."

16. In reading Article 63(2) of the American Convention together with Article 27(2) of the Rules of Procedure, previously referred to in this Order (*supra* Considering 2 and 3), it can be inferred that the Tribunal can order the adoption of provisional measures in matters that have not yet been brought to its consideration at the request of the Commission. In the present matter, the representatives have requested the expansion of provisional measures in favor of the persons who belong to the humanitarian zone "Argenito Díaz" and of those that "will be part of the Humanitarian Zone Andalucía Caño Claro." In this regard, the Court solicited the observations of both the Commission and the State. The State has argued that the measures can not be granted given that the representatives do not have the procedural capacity to make this request. The Commission has indicated that there are uniform risk factors for the beneficiaries of the present measures which, in its judgment, demonstrate the urgency, extreme gravity, and irreparability of harm with respect to these persons, for which it considers that the requested measures should be granted.

17. The Court deems it pertinent to note that in the procedural framework of this matter it has already indicated that "it is the responsibility of the Inter-American Commission to make clear to the Tribunal the universe of beneficiaries of the present measures, which

¹⁰ Particularly, the State observed that Mr. Argemiro Obanda and Mr. Manuel Serafin Aguilar, "for whom an expansion of measures has been requested, already rely on protective measures in Colombia offered by the Interior Ministry of Justice's Protection."

were adopted at the Commission's request"¹¹, and that "without an express request from the Inter-American Commission, this Tribunal cannot extend the protection of the provisional measures order in this matter [...]."¹² This is even more important taking into account that the primarily collective character of the present provisional measures, the large number of beneficiaries, and the different geographic locations in which they are located. In this sense, attending to the conventional and procedural rules that regulate the adoption of provisional measures (*supra* Considering 2 and 3), the representatives' petition cannot be addressed given that they were not submitted by the Inter-American Commission.

18. In this regard, the observations presented by the Commission (*supra* Considering 12 and 13) do not amount to a formal request of provisional measures. The mechanism of provisional measures requires a demonstration of the conventional requisites of gravity, urgency, and irreparability of harm, as indicated in Article 63 of the Convention (*supra* Considering 2) with regard to the persons who claim that the measures apply in their favor.

19. With respect to the representatives' request that the members of the "humanitarian zones" of Caracolí and Caño Manso be recognized as beneficiaries of the present provisional measures (*supra* Considering 10), to determine the universe of persons that belong to the beneficiary communities in the present provisional measures, the Court considered that:

[...] the membership criteria that provides the greatest legal certainty, and which has remained since the adoption of the present provisional measures and their procedures, refers to the organization of the beneficiaries in the 'humanitarian refuge zones' [...]. This has been the criteria for the case of the 161 families represented by the Inter-Ecclesiastic Justice and Peace Commission, which is why these persons are considered beneficiaries of the present provisional measures [...]¹³.

20. Consequently, in the Order of November 17, 2009, the Court considered as beneficiaries of the present measures, in that moment and in accordance with the information offered by the representatives, the members of the 161 families represented by the Inter-Ecclesiastic Justice and Peace Commission, who were established in the humanitarian zones of: Nueva Esperanza, comprised of 33 families; Pueblo Nuevo, comprised of 60 families; Caño Claro, comprised of 21 families, y El Tesoro, comprised of 39 families, as well as in the "five Biodiversity Zones in Curbaradó," comprised of 8 families.

21. Considering the aforementioned, the request that the members of the "humanitarian zones" of Caracolí and Caño Manso be recognized as beneficiaries of the present provisional measures does not imply a mere update of information simply because at that time they had not yet been created based on a "situation of displacement." The universe of beneficiaries of the present provisional measures is limited to the members of the 161 families represented by the Inter-Ecclesiastic Justice and Peace Commission, with the key factor being the criteria of belonging to the humanitarian refuge zones." The Court observes that such denomination refers to the zones which were already established at the time in which the Tribunal ruled in favor of granting the provisional measures, so that to include any other distinct "humanitarian zone" would imply an expansion of the measures, which would have to be solicited by the Inter-American Commission, as indicated in previous

¹¹ Cf. Order of the Inter-American Court of Human Rights of February 5, 2008, *supra* Having Seen 1, Considering sixteenth.

¹² Cf. Order of the Inter-American Court of Human Rights of November 17, 2009, *supra* Having Seen 2, Considering twenty-third.

¹³ Cf. Order of the Inter-American Court of Human Rights of November 17, 2009, *supra* Having Seen 2, Considering twenty-second.

paragraphs (*supra* Considering 17). Therefore, the Court cannot grant the representatives' request.

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22. The representatives have requested that the Court recognize the "open character" of the Order of March 6, 2003 (*supra* Having Seen 1), by which these provisional measures were ordered. The representatives referred in particular to operative paragraph 5 of the already mentioned, in which the Tribunal ordered the State "to guarante[e] the security conditions necessary so that the persons in the communities composed of the Community Council of Jiguamiandó and the families of Curbaradó, who have suffered forced displacement to jungle areas or other regions, can return to their homes or to the 'humanitarian refuge zones' established by these communities."

23. On this point, the State argued that there is a contradiction between the determination of the members of the 161 families as beneficiaries of the present provisional measures, as established in the Order of November 17, 2009 (*supra* Having Seen 2), and the Court's direction to establish conditions so that the displaced population can return to their land, in accordance with the "situation that brought about the present provisional measures."

24. The Tribunal observes that by means of the Order of February 2, 2008, it ordered, *inter alia*, that the State "adop[t], without delay, measures that are necessary to protect the life and personal integrity of the members of the communities composed of the Community Council of Jiguamiandó and the families of Curbaradó, beneficiaries of the present measures [...]", and that it "adop[t] any action necessary to assure that the beneficiaries of the present measures can continue living in the places they inhabit, without any type of coercion or threat [...]." These beneficiaries are, pursuant to that determined by the Order of November 17, 2009, the members of the 161 families represented by the Inter-Ecclesiastic Justice and Peace Commission, as previously noted (*supra* Considering 20 and 21). In this regard, the representatives' request with regard to a Court Order which was issued almost seven years ago, should be rejected for being contrary to the criteria of determination and maximum identification of beneficiaries recently sustained by the Court, particularly in its Order of November 17, 2009.

25. Therefore, there is no contradiction whatsoever in the manner indicated by the State given that, upon completion of the prerequisites established by Article 63(2) of the Convention, other persons that have belonged to the Communities of Jiguamiandó and Curbaradó and wish to return to that territory and inhabit it by means of the creation of "humanitarian zones," will be able to be beneficiaries of the present measures, upon express request presented by the Inter-American Commission.

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26. The State also asked the Court to request that the representatives "specify the names of [the] five [...] self-designated 'Biodiversity Zones,' as well as the exact coordinates of their location," whose members are beneficiaries of these provisional measures, given that the Order of November 17, 2009 (*supra* Having Seen 2), did not identify which are said Zones and due to the fact that "in the map attached to the representatives' briefs transmitted by the [...] Court [...] on February 22, 2007, neither the location nor the name of each of these five [...] self-designated 'Biodiversity Zones' is clea[r]. The State made this

request noting that this “would permit not [o]nly specific direction in the adoption and implementation of the security measures [...], but also the pertinent reporting to the [...] Court, in monitoring compliance with the present provisional measures.”

27. The Court notes that in the Order of November 17, 2009, it was effectively decided that among the beneficiaries of the present provisional measures are the members of the five “Biodiversity Zones in Curvaradó,” composed of 8 families pursuant to the information provided by the representatives. However, the Tribunal observes that according to what can be drawn from the slides presented by the representatives during the public hearing (*supra* Having Seen 7), which were subsequently sent to the Court and transmitted to the Inter-American Commission and the State, there are currently 51 biodiversity zones in the “collective territories” of Jiguamiandó and Curbaradó. From the maps contained in the slides it is not possible to determine which of these denominated “biodiversity zones” correspond to Curbaradó, nor which of these correspond to those mentioned in the Order of November 17, 2009, in accordance with the information presented by the representatives.

28. In view of the aforementioned, and considering the State’s request, the Court requires that the representatives and, particularly, the Inter-American Commission, clarify which are the five “biodiversity zones” in favor of whose members are entitled to the present provisional measures, and that they present the information necessary in order to determine and identify them.

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29. Finally, keeping in mind the determination of beneficiaries of the present provisional measures brought about by means of the Order of November 17, 2009, the Court requests that the Inter-American Commission, the representatives, and the State refer solely to these beneficiaries from this point forward. Additionally, the Court requests that, in referring to particular persons, they expressly indicate to which “Humanitarian Zone” or “Biodiversity Zone” they belong, to further the due supervision and implementation of the present provisional measures.

30. In this regard, the Court notes that throughout the process of these provisional measures it has ordered the adoption of special measures in favor of determined persons. Without prejudice to that indicated in the previous paragraph, these measures will remain, and therefore the parties must continue reporting to Court in this regard. Additionally, the Tribunal reiterates that Article 1(1) of the Convention establishes the general obligations of the State Parties to respect the rights and liberties which it consecrates and to guarantee its free and full exercise to every person that is subject to its jurisdiction. These obligations must be completely fulfilled independent of the existence of the provisional measures ordered by the Tribunal in the present matter.¹⁴

31. The Court will consider all of the aforementioned for the purpose of supervising the implementation of the provisional measures ordered in the present matter, in conformity with the Order of February 5, 2008 (*supra* Having Seen 1).

¹⁴ Cf. *Matter of Velásquez Rodríguez*. Provisional measures regarding Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, Considering third; *Matter of Carlos Nieto et al.* Provisional measures regarding Venezuela. Order of the Inter-American Court of Human Rights of January 26, 2009, Considering third, and *Matter of Lilliana Ortega et al.* Provisional measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 9, 2009, Considering forty-fourth.

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32. In relation to the adoption, without delay, of the measures which are necessary to protect the life and personal integrity of the members of the communities composed of the Community Council of Jiguamiandó and the families of Curbaradó, of the measures adopted to make sure that the beneficiaries of the present measures can continue living in the places they inhabit, without any type of coercion or threat (first and third operative paragraphs of the Order of *February 5, 2008*), the State reported that under the framework of the Protection Program of the Justice and Interior Ministry's Human Rights Office, material measures remain in effect for the individual and collective protection in favor of the beneficiaries. The State also mentioned reports of the National Police and the National Army which explain the steps and measures adopted to provide protection to the beneficiaries of the present measures. During the public hearing (*supra* Having Seen 7), the State again informed that that it ordered "the creation of a division in Medellín," given that the division's headquarters was in Barranquilla, but now it would be located closer to the area, and that it also created the XV Brigade in the area,"¹⁵ where there are four posts that have control over the perimeter. These posts are located in the sites "Las Camelias, Cetino, Andalucía and Caño Manso." Additionally, the State indicated that it had increased police presence, which would maintain a fluid dialogue with the beneficiaries of these measures; that the army established "an official liaison," which is charged with centralizing all of the information related to the communities' requests and additionally, that "it has taken serious measures to control the use of force by the troops." The State advised that "on January 19, [2010], the brigade expedited Order 01 which restricts the carrying of weapons even when licensed by [the Municipality of Carmen del Darién and the Municipality de Río Sucio de Chocó]," which means that "they are the only two Municipalities in Colombia where the carrying of weapons is prohibited." The State also reported on the results of the demobilization of illegal armed groups¹⁶ and regarding a wide range of criminal and disciplinary investigations that "are related to the [present] measures."

33. During the public hearing (*supra* Having Seen 7) the State indicated, *inter alia*, that "in no way is the process of land restitution [...] an object of these provisional measures," however, it considered it opportune to inform the Court that "the internal mechanism have been working."¹⁷ In this regard, it referred to the order of May 18, 2010 (*supra* Having Seen 7), in which the Constitutional Court of Colombia ordered the suspension of the land granting process "until it is clarified who are the actual beneficiaries of the community council through the realization of a census which [...] must be completed by July 10 and of an Assembly of Council which must be created by August 10, [2010]," and requested that Tribunal "reject the request to incorporate this into the framework of the provisional measures." Regarding the creation of a census, the State expressed that "it has always

¹⁵ This was already reported by the State approximately two years ago. *Cf. Matter of the Communities of Jiguamiandó Curbaradó*. Provisional measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 5, 2008, Considering fifth.

¹⁶ On this point, the State reported that "37 persons from guerrilla organizations have demobilized, 63 persons belonging to criminal gangs or to guerrilla organizations have been captured, and 4 persons have been taken down in the period between 1909 [*sic*] and 2010."

¹⁷ In pertinent part, the State indicated that "there had been a process of revision of more than 1,200 titles in the area of Jiguamiandó and Curbaradó, and that as a conclusion of this process there are 156 legal and individual precincts there which amount to 6,400 hectares, that there had been 130 precincts which were not registered and, therefore, the sale of 5117 hectares was annulled, and that there had been an irregular annexation in 4 precincts by 17,720 hectares that were also reintegrated to a collective title, and an irregularity in 8 titles by 6,500 hectares".

considered that this [is] the first action that must be taken," but that it "must include all persons, the 161 families who are beneficiaries of these measures and to the other persons [...] who are from Jiguamiandó and from Curbaradó, and who have been displaced." The State reiterated its request for the Court "to abstain from using the concept of humanitarian zone," although it indicated that it had two obligations which are: to distinguish civilians who do not participate in hostilities, and to respect private property. Finally, it indicated that the State "i[s] willing to evaluate any adjustments that are necessary to improve both protection and the guarantee of all rights [...]."

34. The representatives argued, *inter alia*, that the State has formulated a series of material measures of protection adopted based on concrete requests, however, "the merit measures that truly guarantee the life and personal integrity of the [beneficiaries] are absent." Additionally, they warned that the acts of violence continue in the areas of Curbaradó and Jiguamiandó against those who inhabit the Humanitarian and Biodiversity Zones, including, *inter alia*, "threats, harassment, stigmatization, and defamatory media campaigns promoted by palm companies and extensive ranching interests [...] some of which pertain to the armed paramilitary structure; and by official agents."¹⁸ The representatives considered it necessary for the State to adopt material measures of protection in conformity with the collective character of the measures and the identity of the Humanitarian and Biodiversity Zones, as well as the individual measures required according to "the socio-cultural identities and geography of the territory." In this regard, the representatives argue that maintaining the process of obtaining material measures of protection "has been characterized by the initial denial of the measures with a differential focus," upon being "with complex proceedings that put additional burdens on the petitioners and beneficiaries." Regarding the investigation of the fact that motivated the present provisional measures, the representatives observed "[the] continual incompliance of the Colombian State." They noted that the "development of the investigations [p]ersists in a disperse manner and not as a unified process, and the types of criminal laws under which the investigations are being carried out is not that of Crimes Against Humanity under International Law [...] Similarly, the state has not specified the correlation between the crimes committed and the illegal appropriation of ancestral territories by particular economic interests, the palm industry, and extensive ranching [...]. The representatives noted that threats, harassments, and detentions, among others, continue against the beneficiaries of these measures, and that "impunity is not the State's only answer, [given that] there are [also] judicializations that reaffirm the rights of the beneficiaries to live in their territory."¹⁹ In the public hearing, (*supra* Having Seen 7), Mrs. Ligia María Chaverra, beneficiary of these provisional measures, indicated that the "threats [...] continue multiplying for the communities [of] Curbaradó and Jiguamiandó," and that "law enforcement is in Curbaradó and Jiguamiandó [...] but they also threaten, and there they also meet the paramilitaries, passing together with army [...] and they say nothing to them [...]."

¹⁸ Regarding the "defamatory campaign against the humanitarian zones, the biodiversity zones, and the humanitarian companions," during the public hearing (*supra* Having Seen 7) the representatives noted the use of "peace solicitors," which they clarified are "demobilized guerrillas." Additionally, the representatives referred to the "accusations made by Germán Marmolejo, in the United States," in which he accused the "humanitarian and territorial protection spaces [of being] connected to the FARC guerrillas."

¹⁹ The representatives indicated that: Wilinton Cuesta is accused of the crime of homicide and rebellion; the case is moving forward under file 20-22 wherein two persons are currently deprived of liberty and twelve others are also implicated; Mr. Enrique Petro is accused of being a land invader; and the Barrera family was accused of the crime of violent protest.

35. The representatives referred to the “[c]ontinuation of the illegal appropriation and usufruct of collective lands,” to the [i]ncrease in the repopulation of persons alien to the territory on the part of the palm, cattle, and wood industries.” The representatives also referred to the “[m]echanisms of usurping the authority of the High Councils of Curvaradó and Jiguamiandó.”²⁰ They warned that “[t]he current in compliance with the mechanisms designed to hand over territories and to create collective property rights has aggravated the beneficiaries’ situation.” During the public hearing (*supra* Having Seen 7) the representatives referred to the order of the Constitutional Court of Colombia of May 18, 2010 (*supra* Having Seen 6) and, regarding the same, warned that the person who was to han[d] over [the] territory [on May 19, 2010,] is not the representative of [...] the communities of Curbaradó.” With respect to the State’s allegations wherein they attempt to disengage the matter of land with that of provisional measures, the representative assert that “the matter of land and the violations against personal integrity and life are intimately related.” Additionally, they expressed their desire to “update the census [...] to determine wh[o] are the beneficiaries of the territory.” The representatives also noted that the existence of the Humanitarian and Biodiversity Zones is not “an invention because armed conflict already exists.”

36. The Commission valued the efforts carried out by the State to comply with its obligation of protection. However, it noted that “it did not [make] mention of the efficacy and concrete and immediate impact of these measures for the beneficiaries. Additionally, it considered that the alleged mechanisms of usurpation to the authority of the High Councils of Curvaradó and Jiguamiandó, indicated by the representative, “aggravat[e] [...] the situation of extreme gravity and urgency for the beneficiaries of the present measures.” Additionally, they warned that “the investigations related to the facts of this case have not presented substantial advances, which amounts to a situation of impunity that facilitates the happening of new acts of violence against the beneficiaries.” During the public hearing (*supra* Having Seen 7) the Commission emphasized that “there are diverse factors which maintain the risk of eventual irreparable harm to life or physical integrity against the inhabitants of the humanitarian and biodiversity zones and the other persons who reside in the river basin of Jiguamiandó and Curbaradó.” The representative referred to, *inter alia*, the presence of armed groups outside of the law, the usurpation of lands, the participation in judicial processes for the restitution of land against palm businesses, the existence of private security forces, the constant designations for belonging to subversive groups, threats, and acts of harassment against human rights organizations. The Commission indicated that “in the fourth chapter of its annual reports of 2008 and 2009 regarding Colombia, [...] it reiterated its concern for the situation of the community councils of Jiguamiandó and Curbaradó, [and that] in this regard [...] it had indicated that the territories registered in favor of these communities have been objects of usurpation with the purpose of using them in the lucrative business of fuels, which has affected the biodiversity of the area and the resources which these communities own for their sustenance [...].” Finally, the Commission referred to the Order of the Constitutional Court of Colombia (*supra* Having Seen 6) which commanded the suspension of the process of land granting until the protective conditions ordered by said Order are met.

²⁰ In this regard, the representatives reported that “18 communities belonging to the Basin of Curvaradó appointed an Extraordinary Assembly for the election of its true Legal Representative, to be held April 24, 2010,” and that the following persons were chosen: Raúl Palacio Salas as Legal Representative of the High Council of the River Basin of Curvaradó, and for the Executive Board: María Ligia Chaverra, President; Simona Torres, Vice-President; Andrés Carmona, Prosecutor; Hugo de Jesús Tuberquia, Secretary; and, Pedro Cortés, Member, “all beneficiaries of the present [p]rovisional [m]easures who inhabit the Humanitarian and Biodiversity Zones.” This approval for the body was applied for on April 26, 2010 before the Mayor of Carmen del Darién “although to date this authority has not commented.”

37. The Court observes that the representatives and the Inter-American Commission have continually referred to the information related to the processes and procedures related to the claims for land restitution, among others, put forth by the beneficiaries of the present provisional measures, to alleged irregularities and problems in the election of community leaders, to the realization of a census for the communities of Jiguamiandó and Curbaradó, to problems of "repopulation," and to the illegal farming and ranching by third parties in the territory that corresponds to, among others, the beneficiaries of these measures. The Court considers it appropriate to clarify that it has already referred to the general problems produced in the internal ambit due to the titling and determination of ownership of collective lands that apparently belong to, among others, the beneficiaries of the present provisional measures and to the alleged acts of invasion and illegal exploitation of these lands, all according to that reported by the Inter-American Commission, the representatives, and the State to the effect that this is allegedly related to the acts of harassment, threats, and detentions, *inter alia*, against the beneficiaries of the present provisional measures. However, the Court also considers it pertinent to clarify that it cannot rule on aspects related to judicial and administrative proceedings relating to land restitution and its outcomes, the census, the election of leaders, or the alleged illegal farming and ranching in lands that apparently belong to the beneficiaries, given that all of these issues should be analyzed in the respective contentious case and not under the framework of provisional measures.²¹ Regarding the alleged threats, harassment, and stigmatization against human rights organizations, particularly that of the representatives of the beneficiaries, the Court reminds the parties that the present measures have been ordered to protect the life and personal integrity of the beneficiaries, members of the Communities of Jiguamiandó and Curbaradó, and thus it will not issue an opinion regarding acts allegedly committed against the representatives.

38. Regarding the allegations related to the judicial and disciplinary investigations conducted by the State about the supposed acts of harassment, threats, detentions, and assassinations committed against the beneficiaries of the present measures, particularly those allegations that refer to the supposed absence of results and the type of the investigation that the State is carrying out, the Court considers it pertinent to clear that, previously, during the processing of these provisional measures, it held the criterion of requesting the State to investigate the facts that motivated the given measures and to inform the Tribunal about them. However, considering the characteristics of the present matter and the fact that these provisional measures have been processed for approximately seven years, the Court considers that, in the present matter, the investigations entails, for the Tribunal, an analysis on the merits that goes beyond the scope of the provisional measures. In this regard, in the Order of February 5, 2008 (*supra* Having Seen 1, Considering Clause 13), the Tribunal reminded the State of its obligation to diligently investigate, process, and sanction, as appropriate, all of the acts of aggression pointed out by the representative, as an effective measure of prevention against acts of this kind. However, in the Operative Part of said Order the Court had not yet requested information about these investigations from the parties.

²¹ Cf. *Matter of children and adolescents deprived of liberty in the "Complexo do Tatuapé" of the CASA Foundation*. Provisional measures regarding Brazil. Order of the Court of July 3, 2007, Considering Seventeenth; *Matter of the Newspapers "El Nacional" and "Así es la Noticia"*. Provisional measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 25, 2008, Considering Thirty-Sixth; and *Matter of Carlos Nieto Palma et al.* *supra* note 14, Considering fifteenth.

39. Taking into account the foregoing, under the framework of the present provisional measures and has been done in other matters,²² the Court will not refer to the supposed lack of results nor to the form in which the State is conducting investigations. However, this does not exempt the State from its obligation to investigate the reported acts that sustain the present measures, in terms of Article 1(1) of the American Convention (*supra* Considering 30).

40. Regarding the scope of the present provisional measures, the Court observes that the State has made reference to diverse measures of protection, both general and individualized, adopted in favor of the beneficiaries. However, with regards to its reference to measures of a general character, the State has not made precise reference to the measures adopted and to the specific results in favor of the beneficiaries of the present provisional measures, principally because it refers to the facts that have given rise to the present provisional measures and to their maintenance during the course of almost seven years.

41. The Court notes that during the public hearing, the State asserted that it “believe[s] it has made the best possible effort [...] and that] it would [have] wanted more results [...]”. The Court values these efforts brought about during almost seven years of the processing of the present provisional measures. However, according to the information presented by the Commission and the Representatives, the beneficiaries continue to be subject to threats, harassment, detentions, and assassination, *inter alia*, presumably by members of illegal armed groups and by members of security forces, despite the fact that the fundamental purpose for the adoption of these measures is the effective protection and preservation, by the State, of the life and personal integrity of the beneficiaries.

42. Under the framework of these provisional measures the Court has already indicated that to carry out the rights established in the American Convention, the State party has the obligation, *erga omnes*, to protect all persons that are subject to its jurisdiction. In the judgment of the Court, said general obligation is imposed not only in relation to the power of the State but also in relation to the actions of particular third parties, including irregular armed groups of any kind.²³

43. The Court accepts the State’s proposal (*supra* Considering Clause33) to “evaluate the adjustments that are necessary” to improve “both the protection as well as the guarantee” of all rights. The State should continue to adopt the measures which are necessary to protect the life and personal integrity of all of the members of the Community Council of Jiguamiandó and the families of Curbaradó, beneficiaries of the present provisional measures, taking into account their particular situation.

²² Cf. *Matter of children deprived of liberty in the “Complejo do Tatuapé” of FEBEM*, *supra* note 21, Considering seventeenth; *Matter of Millacura Llaipén et al.*; Provisional measures regarding Argentina. Order of the Inter-American Court of Human Rights February 6, 2008, Considering sixteenth; and *Matter of Urso Branco Prison*. Provisional measures regarding Brazil. Order of the Inter-American Court of Human Rights November 25, 2009, Considering thirty-second.

²³ Cf., *Case of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures regarding Colombia. Order of March 6, 2003, Considering eleventh; *Case of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures regarding Colombia. Order of November 17, 2004, Considering thirteenth; *Case of the Communities of Jiguamiandó and Curbaradó*. Provisional measures regarding Colombia. Order of March 15, 2005, Considering ninth; and *Case of Communities of Jiguamiandó and Curbaradó*. Provisional Measures regarding Colombia. Order of February 7, 2006, Considering sixth.

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44. Regarding the measures adopted to protect the life and integrity of Ligia María Chaverra and Manuel Dennis Blandón, giving full participation to these beneficiaries and their representatives in their design (second operative paragraph of the *Order of February 5, 2008*), as well as the situation of Mr. Enrique Petro, during the public hearing (*supra* Having Seen 7), the State indicated that these persons are subject to a level of risk and grade of threat of an extraordinary level. The State indicated that it had taken measures in keeping with means “of protection,” “of communication,” and “of transportation.” The State informed regarding the implementation of measure in favor of Manuel Dennis Blandón and Ligia María Chaverra, consisting of the presentation of “horses with saddles,” which were given on March 8, 2010. The State clarified that, although this measure had been approved since the hearing of January 26, 2009, by the Committee for Regulation and Risk Evaluation, advisory body to the Protection Program of the Justice and Interior Ministry, it could not be implemented because the beneficiaries and petitioners had not remitted [the] request [for] a sales contract,” a requisite solicited by the State to hasten the implementation process. Additionally, the State indicated that the aforementioned Committee, in its session of February 23, 2010, “recommended granting three boats to the communities of Jiguamiandó and Curvaradó” in the name of Ligia María Chaverra and Manuel Dennis Blandón, among others, as well as “the monthly allocation of a sum for the necessary fuel,” for which the beneficiaries remitted to said Program the pertinent specifications, [which] [subsequently] made certain changes to the document according to “environmental regulations,” and that this was remitted to the beneficiaries so that they might offer their observations. The State reported that, moreover, Mrs. Ligia María Chaverra relies on “a cellular means of communication, approved in September 2007,” as “a material measure of protection.”

45. Regarding Mr. Enrique Petro, during the public hearing (*supra* Having Seen 7) the State advised that it had installed “a control post in operation 24 hours a day near his house and a [sic] personal security when he is in the urban area of Belén de Bajirá, and likewise police accompaniment when he travels towards his ranch until a site when he is received by an army patrol and accompanied for the rest of his journey.” The State also indicated that on March 8, 2010, it implemented a measure of protection “consisting of horses with saddles” for his benefit, and that Petro has a “cellular means of communication.” The State indicated that the implementation of a measure “consisting of a running vehicle” was pending, given that Mr. Petro had requested unarmed escorts. In this regard, the State indicated the “Protection Program offers as a measure the assignment of an escort [...] which operates with arms,” which is why the protection scheme would need to be implemented by a private firm, and that to this end it requested that the representatives remit profiles to select the “escorts,” although the same had not fulfilled the minimal requirements of said private firm. In this regard, the State indicated that it urgently requested that the representatives again present profiles. However, the State also mentioned that it requested “an evaluation of the possibility of loosening the anticipated requisites so that escorts of confidence could attend to the particular situation of Mr. Petro”. The State noted that it was aware of complaints of threats referred to by Mr. Enrique Petro and that “every time there was a threat, [it] [had] taken immediate measures.”

46. Finally, the State reported that “it had worked to adjust the “differential focus of the program;” however, it warned that “there has been a difficulty in the implementation of these measures[, given that] some of these have been approved but are in the process of implementation or the implementation has been delayed, due to administrative processes that are necessary for the expenditure of public resources or to a delay in some processes.”

47. Regarding Mr. Enrique Petro, the representatives informed of the existence of alleged “known plans” to assassinate him. In this regard, during the public hearing (*supra* Having Seen 7) Mr. Enrique Petro asserted that “threats against his life continue” and that while he receives the protection of the “national army [...] in front of [his] house,” they are set far away [...] providing space for persons who are threatening [him].” He also informed the Tribunal that “[he] was rob[bed] of his cell phone so that he would be without means of communication.” He specified that he had filed complaints regarding these acts.

48. The Court recalls that by means of the Order of February 5, 2008, it ordered the State to adopt the “measures that [were] necessary to protect the life and integrity of Ligia María Chaverra and Manuel Dennis Blandón” (Second Operative Paragraph). However, the Court has received specific information from the State not only in relation to these persons but also in relation to Mr. Enrique Petro, from information provided by the representatives in regarding apparent plans to “assassinate him.” The Court takes note that the State has informed that these persons, according to the studies conducted, are at an extraordinary level of risk, and that it has adopted diverse and specific measures for their protection.

49. Additionally, the Court has recent information regarding the situation of Mr. Enrique Petro; however, neither the Inter-American Commission nor the representatives have referred to the current situation of Ms. Ligia María Chaverra and Mr. Manuel Dennis Blandón.

50. The Tribunal affirms that the Constitutional Court of Colombia, in the Order of May 18, 2010, monitoring Sentence T-025 of 2004, *inter alia* (*supra* Having Seen 6), noted that there had “been notice of serious threats against the life of leaders of the community of Curvaradó[,] such as Mr. Enrique Petro and Ms. Ligia Chaverra [...]”, for which, respectively, it ordered that the Justice and Interior Ministry of Colombia provide “the necessary measures of protection [...] as part of the efforts to prevent crimes against the protected subjects.”

51. In view of that asserted by the State regarding Ms. Ligia María Chaverra, Mr. Manuel Dennis Blandón, and Mr. Enrique Petro, the information from the representatives regarding Mr. Enrique Petro, especially that offered during the public hearing (*supra* Having Seen 7), and that which was ordered in the Order of the Constitutional Court of Colombia, in consideration of the particular circumstances of the present matter, the Court holds that the State should continue to adopt the individual measures of protection necessary in favor of Ms. Chaverra and Mr. Blandón, and it orders the State to continue to adopt all measures necessary to protect Mr. Enrique Petro. The Tribunal recalls that these measures of protection should be agreed upon with the participation of their beneficiaries or the representatives, and similarly, that these should be implemented as soon as possible, for which it is particularly important that there is opportune collaboration between the representatives and the State toward this end.

52. Without prejudice to the foregoing, to effectuate the adequate supervision of the present provisional measures, the Court asks the representatives and, particularly, the Inter-American Commission, to present updated information regarding the current situation of Ms. Ligia María Chaverra and Mr. Manuel Dennis Blandón.

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53. In referring to the establishment of a continual supervision mechanism and of permanent communication in the so-called "humanitarian refuge zones," (*fourth Operative Paragraph of the Order of February 5, 2008*), the State highlighted the communication between "the communities of Jiguamiandó and Curvaradó with the Engineer's Battalion No. 15 'General Julio Londoño Londoño,'" as well as the acceptance of the presence of military units by the communities and their representatives. Additionally, the State reported that via the Presidential Program of Human Rights and International Humanitarian Law, it asked the Public Defender and the Attorney General of the Nation, "the possibility of carrying out evaluations regarding the situation of the basin areas, with the purpose of supervising the implementation of the measures." During the public hearing (*supra* Having Seen 7) the State reported that "in October 2008 and April 2009, the National Government addressed the Public Defender and the Attorney General's offices without obtaining an answer;" however, it recalled that the same "have a permanent presence [in the area], the Public Defender's Office has a Community Defender, there is an analyst for the early alert system, and there are similar mechanisms provided by the Attorney General's Office." Additionally, the State indicated that "[i]n the month of January the Inter-Institutional Committee of Early Alerts discussed a risk report issued by the Public Defender[,] and [that] this report was converted into an early alert by the Inter-Institutional Committee.

54. The representatives indicated that "[t]he rapprochement of the Military Forces demonstrates an intent to develop positive relations with the beneficiaries and the petitioners." However, they expressed that "[t]his positive attitude remains seriously questione[d] by the concrete behavior and the situations that reflect abuses of authority or military inefficiency in confronting the paramilitary structures."

55. In a communication dated August 21, 2008 (*supra* Having Seen 5), the Commission observed that "yet again" the State had not contributed "any information regarding the establishment of a continuous supervision mechanism or of permanent communication in the named "humanitarian refuge zones." However, in its subsequent communications the Commission did not refer to this aspect.

56. The Court recalls that the Order of February 5, 2008 (*supra* Having Seen 1, Considering 14) demonstrated proof that, among other issues in relation to this point, the State had indicated that "there [were] two options that [...] it consider[ed] that c[ould] be useful in supervising this process: first, the possibility of asking the Public Defender's Office and the Attorney General of the Nation to c[onduct] quarterly evaluations of the situation in the basin areas [of Jiguamiandó and of Curbaradó], which would permit the supervision of the State's work in relation to the obligations ordered in these measures; and secondly, the establishment of visits to these lands, which could be made by State authorities and with participation of the beneficiaries, as a manner to evaluate the situation. The frequency of these visits c[ould] also be quarterly, without prejudice to other extraordinary efforts that may be necessary." In this regard, in the mentioned Order the Tribunal valued these proposals by the State, which "would help to support the effectiveness of the protective measures adopted in this matter," and it ordered to enact these proposals (*supra* Having Seen 1, Considering 17).

57. The Court notes that in the Order of February 5, 2008, the State's information refers only to the possibility that the Public Defender's Office and the Attorney General of the Nation could carry out quarterly evaluations regarding the "situation in the two basins," regarding which the Court affirms it has not received an answer regarding such matters. The State did not refer to the possibility of carrying out "visits to these lands."

58. The Tribunal notes that the State has referred to other existing measures on this point. However, it requests that the State inform the Court if the prior commitments continue or if other measures will be adopted to effectively establish the continuous supervision mechanism and permanent communication in the named "humanitarian refuge zones."

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59. Regarding the State's obligation to give participation to the representatives designated by the beneficiaries of these measures in the planning and implementation of the present measures and to in general, keep the representatives informed of the advancement of the measures ordered by the Tribunal (*Fifth Operative Paragraph of the Order of February 5, 2008*), the most recent information provided by the State indicates that "during years 2008, 2009, and 2010, 14 meetings were held regarding the monitoring of these measures, some of which were convoked in an extraordinary manner at the request of the representatives of the beneficiaries of these measures."

60. The representatives indicated that in the process of cooperation on the measures, it is necessary for the State to "adopt[] the recognition of the Humanitarian Zones and the Biodiversity Zones as mechanisms for the civil population to strengthen humanitarian law and environmental protection." Additionally, they referred to a series of alleged statements by the Coordinator for the Territorial Unity of Social Action of Urabá against the representatives during a monitoring meeting regarding the provisional measures, which, in their opinion, "ha[s] generated an environment that hinders cooperation and delays the implementation of the measures."

61. The Commission valued positively the convocation of the meetings as reported by the State, and considered that "there should be fluid communication and constant collaboration between the State and the representatives of the beneficiaries for the best implementation of the provisional measures."

62. The Court reiterates that it cannot rule on the facts or situations that are not exclusively concerned with the beneficiaries of these measures. In this regard, the Tribunal will not consider that offered by the representatives regarding the alleged statements by the Coordinator for the Territorial Unity of Social Action of Urabá.

63. The Court does not lose sight of the mainly collective character of the present provisional measures. However, it does not fall to the Inter-American Court to order that the State recognize the so-called "humanitarian zones" and "biodiversity zones" as such. In the context of the present provisional measures, the Tribunal is concerned with requesting that the State involve or give participation to the beneficiaries or their representatives in the measures that are adopted for their protection, considering their particular situation and needs.

64. Considering the aforementioned, the Tribunal reiterates that the State must give participation to the beneficiaries or their representatives in the planning and implementation of the present measures and that, in general, it keep them informed of the advancement of the measures ordered by the Tribunal

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65. The representatives reported (*supra* Having Seen 4) that on “October 14, 2008,” “paramilitaries assassinated the community leader of Curvaradó, W[alberto] H[oyos] R[ivas],” who “was in the Humanitarian Zone of Caño Manso, within the collective territory of Curvaradó, participating in a meeting with the community[, and, upon leaving] he approached the highway that connected to the municipality of Belén de Bajirá, [...] when a motorcycle approached [...] from which a man fired a shot, causing [Hoyos Rivas’] death.” The representatives indicated that the [victim] had been called to testify in front of the Special Circuit Criminal Tribunal of Bogotá, in the case of the homicide of the community leader of Curvaradó, Orlando Valencia. Similarly, the representatives asserted that “[i]t is regrettable that [...] there has not been any concrete result in the criminal investigation for these events [...] the absence of [which] has increased the risks for [...] live witnesses of these events, who have had to abandon the collective territory, for 7 months, due to threats against their life.”

66. Regarding the homicide of Mr. Walberto Hoyos Rivas, the State informed that the Attorney General of the Nation reassigned the investigation of these facts to the National Unit for Human Rights and International Humanitarian Law, currently led by Prosecutor 36 of the support unit of Medellín, under file No. 6837. During the public hearing (*supra* Having Seen 7) the State asserted that, “because the events are still under investigation [...], it [would] not be possible to reveal[] many of the aspects [...] inherent to the investigative process.” The State argued that “one of the theories regarding the motives that could have led to the assassination of Mr. Hoyos relates to the fact that he had been [...] a community leader in the Caño Manso region and [...] had established himself [as] a defender of those who abandoned their lands because of violence [...], causing him to be a target of criminal and illegally armed organizations called the Black Eagles.” Additionally, the State asserted that it had carried out diverse “interviews”; “individualization and identification of persons who have been named as presumed authors or conspirators of the crime”; “efforts in the area of Belén de Bajirá, through CTI investigators”; “efforts aimed at establishing whether the crime against Mr. Hoyos is related to other crimes that have occurred in the area,” and that “the goals during [...] the upcoming days are to convoke a special commission at the site of the events and bring prosecutors and investigations to the area for the purpose of obtaining evidence.” The State also highlighted that Walberto Hoyos “ha[d] certain measures of protection but, at the moment of his assassination, [...] he had been abandoned or was not complying with the instructions he had been given by the Security Organs in charge of his protection.”

67. The Commission deeply regrets the death of Mr. Walberto Hoyos and observes with concern “that the death of a beneficiary of provisional measures ordered by the Court reveals the deficiencies of the Colombian State in complying with its obligations.” Therefore, it urged the State “to immediately and fully comply with its obligations to protect the beneficiaries of these provisional measures.” Regarding the corresponding investigation to find and sanction those responsible for this act, the Commission warned that it is still “in the preliminary phase.”

68. The Court deplores the death of Mr. Walberto Hoyos. In this regard, it requests that the State continue adopting the necessary measures for the protection of the beneficiaries of these provisional measures. Given that the aspects related to the investigation of his death are material matters that correspond to the contentious case (*supra* Considering 38), the Tribunal will not yet require more information from the parties in this regard. However, as it has done previously in this Order, the Court recalls that it is an obligation of the State to investigate the complaints and allegations of the representatives, among these, those regarding the death of Mr. Walberto Hoyos, in conformity with Article 1(1) of the American Convention (*supra* Considering 30).

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69. The Court expressly notes that the present provisional measures came into effect on March 6, 2003 (*supra* Having Seen 1), and that they have been valid over the course of approximately six years.

70. The Tribunal has already indicated that the provisional measures have an exceptional nature, and are announced regarding the necessity of protection, and once announced, they have to be kept as long as the basic requirements of extreme gravity and urgency subsist.
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71. In view of the above, the Court requests that every time the Inter-American Commission presents observations regarding state reports, it has to inform the Court of the procedural state of the respective petition, and that it be grounded and argue adequately for the need to maintain the present provisional measures for the due processing of said petition.

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72. The Tribunal received directly from the Constitutional Court of Colombia a notification of an Order issued May 18, 2010 (*supra* Having Seen 6), related to the “[a]doption of precautionary measures of immediate protection to safeguard the fundamental rights of the Afro-Colombian communities of Curvaradó and Jiguamiandó who are victims of forced displacement, in the context of an unconstitutional state of affairs declared in Sentence T-025 of 2004, and in the monitoring orders, particularly Order 005 of 2009.” In said Order the Constitutional Court “[i]nvit[ed] the Inter-American Court [...], under the Framework of its judicial powers to monitor the decisions adopted by that international organ in [its] Orders [...] regarding “provisional measures [for the] Matter of the Communities of Jiguamiandó and Curvaradó,” [...] form a judicial verification commission to monitor compliance with the orders issued by said judicial organ, as well as to monitor the current situation of vulnerability and risk confronted by the afro-descendant communities and population of the river basins of Curvaradó and Jiguamiandó”.

73. The Tribunal values and appreciates the invitation offered by the Constitutional Court of Colombia. In this regard, it observes that said Court has indicated that the provisional measures provided by the Inter-American Court in the present matter “are binding and should be followed,” and that under the framework of the “unconstitutional state of affairs declared in sentence T-025 of 2004,” among others, it also has ordered “immediate precautionary measures to protect the fundamental rights of the Afro-Colombian communities of Curvaradó and Jiguamiandó,” among these, in favor of the beneficiaries of the present provisional measures. The preceding furthers dialogue among the Courts and strengthens the protection granted by means of the provisional measures ordered by Tribunal.

²⁴ Cf. Matter of Clemente Teherán *et al.* (*Indigenous Community of Zenú*). Provisional Measures Regarding Colombia. Order of the Court of December 1, 2003, Considering third; Matter of Gallardo Rodriguez, Request for Provisional Measures regarding Mexico. Order of the Court of July 11, 2007, Considering tenth, and Matter of Álvarez *et al.* Provisional Measures Regarding Colombia. Order of the Inter-American Court of Human Rights of February 8, 2008, Considering thirteenth.

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

in the exercise of its powers conferred by Article 63(2) of the American Convention and Article 27 of the Rules of Procedure,

RESOLVES:

1. To reiterate to the State of Colombia that it must adopt, without delay, the measures which are necessary to protect the life and personal integrity of all of the members of the Community Council of Jiguamiandó and the families of Curbaradó, beneficiaries of the present measures, in accordance with Considerings 40 and 43 of the present Order.
2. To reiterate to the State of Colombia that it must establish a mechanism of continuous supervision and of permanent communication in the so-called "humanitarian refuge zones," in conformity with Considering 58 of the present Order.
3. To reiterate to the State of Colombia that it gives participation to the representatives, designated by the beneficiaries of these measures, in the planning and implementation of the measures and that, in general, the State keeps them informed of the progress of the measures ordered by the Inter-American Court of Human Rights, in accordance with Considering 64 of the present Order.
4. To deny the representatives' requests to expand the present provisional measures, in accordance with Considerings 17, 21, and 24 of the present Order.
5. To request the Inter-American Commission on Human Rights to present, no later than January 14, 2010, the information stated in Considering 71 of the present Order.
6. To require the State of Colombia to continue informing the Inter-American Court of Human Rights every three months regarding provisional measures adopted, and require the beneficiaries of these measures or their representatives to present their observations within a period of four weeks as of the date that the State's reports are served; and to require the Inter-American Commission on Human Rights to present their observations to said reports within a period of six weeks as of the date they are received.
7. To request that the Secretary of the Court serve notice of the present Order upon the Inter-American Commission on Human Rights, the representative of the beneficiaries, and the State of Colombia.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alesandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary