

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF SEPTEMBER 2, 2010**

PROVISIONAL MEASURES REGARDING COLOMBIA

CASE OF THE MAPIRIPÁN MASSACRE

HAVING SEEN:

1. The Order for urgent measures issued by the then-President of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") of February 4, 2005.

2. The Order for provisional measures issued by the Court on June 27, 2005 in which it decided, *inter alia*:

1. To ratify the February 4, 2005 Order of the President for urgent measures.
2. To require the State to take such steps as might be necessary, forthwith, to protect the rights to life and humane treatment of the following persons and their next of kin:

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

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

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

[...]

3. The Order of the Court of May 3, 2008 whereby it decided:

1. To call upon the State of Colombia to maintain in force the provisional measures adopted in the Order of the Court of June 27, 2005 [...]

2. To call upon the representatives, in compliance with the provisions of Considering paragraph No. 12 herein, to submit as soon as practicable, any comments pending submission and, in particular, the concrete information on the situation of the

beneficiaries of the provisional measures so ordered. In said comments the representatives shall accurately specify if there is a continuing situation of extreme gravity and urgency calling for actions to avoid irreparable damage to persons in order that the Court may determine the need to maintain said protection measures. If within six months from the date this Order is served no information has been furnished, the Court shall decide on the rescission of the provisional measures

3. To call upon the State to submit, no later than June 9, 2008, a report on the implementation of the provisional measures, in particular, detailed information on the risk situation of each beneficiary of the provisional measures, the protection measures adopted in relation to them and the current status and results of the ongoing investigations of the events that gave rise to said measures. After submission of said report, the State must keep the Inter-American Court informed on a two-month basis of the provisional measures adopted.

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

[...]

4. The President of the Court's Order of November 26, 2008 in which she convened the Inter-American Commission, the Republic of Colombia (hereinafter "the State" or "Colombia"), and the representatives of the beneficiaries of the present provisional measures to a public hearing at the Court's seat on January 20, 2009 with the aim of obtaining information from the State regarding compliance with the Judgment, hearing observations from the Commission and the representatives in that regard, and receiving information on the implementation and effectiveness of the provisional measures and the necessity of maintaining them in force.

5. The parties' arguments at the public hearing on the present provisional measures held on January 19, 2009 during the LXXXII Regular Session of the Court at its seat.¹

6. The State's briefs of April 6 and July 8, 2009 as well as those of January 15, May 3, and July 30, 2010 whereby the State submitted information on the implementation of provisional measures. The State reemphasized its request to rescind the present provisional measures in one of its briefs.

7. The briefs of February 12 and August 6, 2009 as well as those of April 28 and July 26, 2010 whereby the representatives of the beneficiaries (hereinafter "the representatives") submitted information on the implementation of provisional measures and on the alleged serious acts that placed "at risk and threatened the lives and right to humane treatment of the beneficiaries Sara Paola Pinzón López and Viviana Barrera Cruz."

¹ The Court delegated a panel of judges to conduct the hearing made up of Presiding Judge Diego García Sayán, Margarette May Macaulay, and Manuel Ventura Robles. In this hearing, the following persons participated as members of their respective delegations: for the Inter-American Commission: Elizabeth Abi-Mershed, Deputy Executive Secretary; Juan Pablo Albán Alencastro, Adviser; Lilly Ching Soto, Adviser; for the victims and beneficiaries: Eduardo Carreño Wilches and Rafael Barrios Mendivil from the José Alvear Restrepo Lawyer Collective; as well as Michael Camillieri and Francisco Quintana from the Center for Justice and International Law (CEJIL); for the State of Colombia: Angela Margarita Rey, Director of Human Rights and International Humanitarian Law, Ministry of Foreign Affairs; Carlos Franco, Director of the Presidential Program on Human Rights; Colonel Juan Carlos Gómez, Director of Human Rights, Ministry of National Defense; Juana Acosta López, Coordinator of the Inter-Institutional Operative Group, Ministry of Foreign Affairs; Generoso Hutchinson, Special Prosecutor for Human Rights, Attorney General's Office; Diana Bravo R., Assistant to the Director of Human Rights, Ministry of Foreign Affairs; and General Jorge Rodríguez, Chief of the Office of the Joint Institutional Defense Command of the Armed Forces.

8. The briefs of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") of March 3, July 23, and August 14, 2009 as well as March 9 and July 28, 2010 in which it submitted its observations on the State's and the representatives' briefs.

CONSIDERING:

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

2. Article 63(2) of the American Convention provides 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 regard to a case not yet submitted to the Court, it may act at the request of the Commission."

3. The terms of Article 27 of the Rules of Procedure of the Court² (hereinafter "the Rules"):

[...]

7. The monitoring of urgent or provisional measures ordered shall be carried out through the submission of reports by the State and the filing of observations to those reports by the beneficiaries of the measures or their representatives. The Commission shall submit observations to the State's reports and to the observations of the beneficiaries of the measures or their representatives.

[...]

4. In order to analyze the need for keeping the present measures in place, the Court will look to the present risk faced by the beneficiaries. In the first instance, the situation will be described as it concerns the group (16 of the total beneficiaries) because the Court has not received individual information on their condition. On the other hand, regarding Viviana Barrera and her family; Sara Paola Pinzón López, Luz Mary Pinzón, and their families; and Luiz Guillermo Pérez and his family, their risks will be described separately because detailed and updated information on their situations has been provided.

1) *Regarding the 16 beneficiaries of the present measures*³

5. The State declared by way of its May 3, 2010 brief that the location of the beneficiaries is still unknown to it and that for that reason it has not been able to

² Rules of Procedure approved by the Court during its LXXXV Regular Session held from November 16-28, 2009.

³ Carmen Johana Jaramillo Giraldo, Esther Pinzón López, María Teresa Pinzón López, Yur Mary Herrera Contreras, Zully Herrera Contreras, Maryuri Caicedo Contreras, Nadia Marina Valencia Sanmiguel, Yinda Adriana Valencia Sanmiguel, Johana Marina Valencia Sanmiguel, Gustavo Caicedo Contreras, Rusbel Asdrúbal Martínez Contreras, Roland Andrés Valencia Sanmiguel, Ronald Mayíber Valencia Sanmiguel, Nory Giraldo de Jaramillo, Marina San Miguel Duarte, and Mariela Contreras Cruz.

conduct the respective risk and threat assessment studies in order to determine the contours of their situation. The State also reported that during the monitoring and coordination meeting held on April 8, 2010, the petitioners reported that the beneficiaries had stated they did not wish to provide the State with their location, taking into account that “on those occasions when this information has been provided, the beneficiaries have received new threats against them.” The State stressed that the representatives “did not have any request for measures in favor of the beneficiaries.” In its last brief, the State remarked that there is no real possibility of implementing provisional measures in their favor and that “it is not obligated to [carry out what is] impossible, bearing in mind that the petitioners have not even provided the minimum information required.” For this reason, the State moved for rescission of provisional measures.

6. After the hearing, the representatives reported to have reestablished contact with the beneficiaries, although they did not specify with whom. They also indicated certain general and permanent risk facts, such as:

- a) The troubling security situation in the municipality of Mapiripán, where the presence of armed individuals and groups of paramilitaries who continue to commit criminal acts in the Department of Meta persists. They also added that family members of the victims refuse to return for safety reasons and wish to be relocated to another part of the country;
- b) The persistence of impunity in the face of the facts giving rise to the request for protection, of particular note: the lack of progress in the investigations which are the State’s duty and not that of the beneficiaries; the forced displacement of families; the lack of disciplinary actions regarding the alleged statements of the Mayor of Mapiripán; and the surveillance on the part of the Administrative Department of Security (DAS) at the time of taking the victims’ statements;
- c) The persistence of impunity concerning the Mapiripán massacre, the characteristics of which allow one to infer the existence of “structural (risk) factors” in this case; further, certain results from the criminal process could give rise to “new instances of intimidation and harassment against those who have insisted that justice be done in this case”;
- d) The special conditions of vulnerability in which the beneficiaries find themselves because, due to the dynamic of the facts, “they live in reasonable fear.” Also, due to their having been displaced and victimized again in various ways, they require special protection;
- e) Regarding Ms. Nory Giraldo and her daughter, Carmen Johana Giraldo, the representatives indicated that they were the victims of acts of harassment that forced them to be displaced several times to Villavicencio, Cali, and Bogota as a result of the threats they received after having testified before the Inter-American Court and after issuance of the Judgment in the *Case of the Mapiripán Massacre*. It was also reported that one of Ms. Nory Giraldo’s sons was killed during this same time period, seemingly by paramilitary agents, although the case was not investigated;
- f) Regarding the Sanmiguel family, the representatives reported that they are presently in the city of Villavicencio and that “no particular risks have arisen,” although they did stress their “continued lack of peace of mind over safety in the municipality”; and

- g) Concerning the Contreras family, the representatives declared that urgent requests for protection were filed in 2006 for Ms. Mariela Contreras Cruz, but the State did not resolve them.

7. The Commission noted that the information submitted by the State was incomplete because it only referred to data for some of the 20 beneficiaries of the measures ordered by the Court. Also, in relation to the Tribunal's request during the public hearing, the Commission indicated that it is not a question of presuming the risk the beneficiaries face, as this has already been conclusively determined, but rather of determining whether such risk persists, given that there is ample cause for concern as to their safety in the context of this case and considering the link between this case and the measures. The Commission also stressed that the requirements for maintaining the measures in place are present because "the factual basis that gave rise to [them] [...] is substantially unchanged." In particular, the Commission referred to the instances of forced displacement experienced by the majority of the beneficiaries as well as sporadic acts of harassment, such as telephone calls attributed to the police. The Commission expressed its concern for the lack of significant progress in the investigations, emphasized the impunity affecting this case and how it contributes to more danger for the beneficiaries, and lastly noted with emphasis that the facts underlying these provisional measures have not been investigated. Likewise, the Commission affirmed that the passage of time "has not moderated the risk faced by the beneficiaries" as they still find themselves in "real danger of harm" to their rights to life and humane treatment.

8. Concerning the concept of "permanent or continued risk" invoked by the representatives, the Commission noted that in this case "a situation of permanent risk has coalesced because the root causes of the beneficiaries' vulnerability have not been addressed[,] nor has the State taken steps aimed at moderating this risk." The Commission stated that so long as the risk continues, provisional measures constitute the most adequate response that the Inter-American System can offer, as it is very probable that the Court's actions by way of these measures has served as a guarantee for the beneficiaries' rights. Therefore, the Commission remarked that an action for rescission of provisional measures "enjoys a strong presumption [in favor] of infringement" on the rights to life and humane treatment of the beneficiaries.

9. Concerning the previous arguments, the State emphasized that the investigation into the alleged facts was begun of its own initiative, but because of the beneficiaries' lack of procedural activity (by way of their representatives), some of the formalities ordered by the Prosecutor's Office have not been conducted. Regarding the alleged lack of disciplinary investigations into the alleged statements of the ex-Mayor of Mapiripán in November 2005, the State noted that the Office of the Mapiripán Municipal Attorney reported no complaints on this issue and no basis was found upon which to initiate an investigation. The State indicated that it had reported this information dating back to July 2006, a fact which was not contested by the representatives at that time. Regarding the alleged existence of "structural factors that give rise to the risk in this case," the State emphasized that the facts that are being investigated in relation to monitoring compliance with the case are different from those that gave rise to the provisional measures, and the Court's procedures for each are of a different legal nature. The State cited jurisprudence from its Constitutional Court in order to conclude that, from the representatives' information, "the existence of recent acts of harassment or threats creating a real and present risk [to] the beneficiaries cannot be reasonably established." The State further argued that the "facts that [necessitated] the measures [...] cannot perpetuate themselves in time as a permanent risk" as the representatives hope. According to the State, the adoption of provisional measures is only justified if

normal guarantees are not sufficient in the specific case. The State reported on some measures that it had taken to guarantee the situation in Mapiripán and in the region in terms of safety and public order; among them, it increased the presence of National Police in the area; ascertained in September 2008 that none of the beneficiaries lived in Mapiripán; and provided information on the "Godfather Plan" "whose aim is to assign a police unit to maintain direct communication with any person facing any elevated level of risk or threats." Based on these efforts, the State requested rescission of the provisional measures concerning all these persons.

10. The Court notes that it has not received detailed, specific information regarding the existence of new acts of harassment or threats affecting this group of 16 beneficiaries. In responding to the specific needs for each beneficiary as required by the Court, the representatives did not submit any information in addition to that which was already made known during the public hearing. What's more, the representatives indicated that regarding the Sanmiguel family "no risks have become apparent" (*supra* Considering 6(f)) and that with respect to the Contreras family, no updated information exists concerning their risk (*supra* Considering 6(g)). Nonetheless, pursuant to the general information before the Tribunal, the beneficiaries' vulnerability persists in several ways both as victims of the Mapiripán massacre and, particularly, due to their forced displacement.

2) *Regarding Viviana Barrera*

11. Based on the alleged threats against Ms. Barrera, the State remarked that a monitoring and cooperation meeting was held on September 3, 2009 in which the State reached several agreements for her protection.⁴ It indicated that on September 8, 2009 the Ministry of Justice and the Interior provided Ms. Barrera with an *Avantel* cellular phone and ordered that a new risk and threat assessment study be carried out dealing with her (then) current place of residence. However, the State noted that this study was never conducted - nor were the perimetric patrols to which the National Police had agreed - because the beneficiary could not be located. Regarding the investigation into the allegedly threatening telephone calls received by Ms. Barrera, the State indicated that "[the] methodological program calls for conducting interviews with the victims in order to clarify whether the threats are related to the statement the beneficiary gave" before the Inter-American Court. Despite this, the State noted that "at the present time, it has not been possible to locate her." Thus, the State noted that the active participation of the petitioners is essential to obtaining results in investigations and again reiterated that the representatives of the beneficiary have not reported on the existence of new acts of threats, nor have they presented any request for protective measures in their favor. For this reason, the State requests a rescission of the provisional measures issued in favor of Ms. Barrera and her family.

12. The representatives affirmed during the hearing that Ms. Viviana Barrera's situation was worrying, because she lived in Mapiripán and was obligated to relocate together with her family over three departments of the country (Cundinamarca, Meta, and Boyacá) owing to the alleged public statements on the part of the mayor of Mapiripán in 2005 in which he said that Ms. Barrera was going to receive a "multi-million-dollar compensation." They added that that situation got worse due to the

⁴ According to the State, these refer to: i) delivering to Ms. Viviana Barrera one (1) *Avantel* communication device, ii) ordering a new Risk and Threat Assessment Study on the beneficiary in her present place of residence, and iii) considering the possibility of conducting a Risk and Threat Assessment Study in the city where Ms. Barrera will take up residence.

lack of police protection in Villavicencio when she was threatened at her workplace and residence. The representatives also indicated that Ms. Barrera received threatening telephone calls on August 10, 19, and 26, 2009, events that occurred several more times, but the beneficiary would later refuse to answer such calls. These happenings were brought to the attention of the Human Rights Directorate and the Human Rights Division of the Colombian Ministry of Foreign Relations in August 2009 and April 2010. On the other hand, the representatives reported to have information that the prosecutor of Santa Rosa de Viterbo is moving forward with a criminal investigation for the facts forming the subject matter of the complaint, and the prosecutor's office had given "instructions to the first brigade, to the police department, and the DAS directors in order to coordinate a security schema for Ms. Viviana Barrera Cruz and her husband Gustavo Enrique Quintero." The representatives maintained that "the protective mechanisms that have been implemented based on the provisional measures cannot be the only measure taken by the State to safeguard the life and safety of the beneficiaries"; however, they expressed appreciation for the State's willingness to implement them. Finally, the representatives reported that on April 8, 2010 they became aware that, owing to the threats received, "Viviana Barrera and her family were obligated to relocate to another city in Colombia."

13. During the hearing, the Commission expressed its view that the provisional measures should not be rescinded only for lack of information on the present risk. Regarding Ms. Viviana Barrera's situation, the Commission indicated that it was "essential for the efficacy of the measures that fluid [lines of] communication [be] maintain[ed] and request[ed] that the State [...] adopt all effective measures at its disposition in order to locate [her]." The Commission further observed that the State "delayed more than three months to 'request assignment of a working group to create and execute a methodological program' to provide protection to the beneficiary." Also, the Commission observed with concern that the State has not made any significant progress in the investigation into the events forming the subject matter of the complaint.

14. Acts of harassment and threats have emerged that have caused the internal displacement of Ms. Viviana Barrera and her family members. At the time of issuance of the present Order, the State has not fulfilled its commitment to carry out a risk and threat assessment study of her present situation.

15. The Court positively assesses the State's efforts in implementing provisional measures in favor of Ms. Viviana Barrera and her family, particularly in providing her with a communication device and in the State's willingness to conduct a risk and threat assessment study. On the other hand, the Court laments both the State's failure to locate the beneficiary in order to determine the security and protective measures appropriate to the risk she faces as well as the representatives' inability or failure to provide this information to the State following the monitoring and coordination meeting held on April 8, 2010. Having regard for the foregoing, the Court exhorts the representatives of the beneficiary and the State to seek out the most appropriate channels of communication to overcome the obstacles that stand in the way of adequate implementation of protective measures to the detriment of the beneficiary.

3) Regarding Sara Paola Pinzón López and Luz Mery Pinzón López

16. The State reported that the disciplinary action before the Attorney General's Office, initiated by Ms. Sara Paola Pinzón's complaint against members of the

National Police, was shelved in October 2009 because members of the police were at that time pursuing a risk assessment study and no irregularities were found. In relation to the alleged threats of May 8, 2010 against Ms. Luz Mery Pinzón, as noted by the representatives (*infra* Considering 18), the State reported that no complaint has yet been filed and that the Attorney General has not been able to commence the relevant investigations to corroborate if, in effect, such criminal threats were made. Furthermore, the State specified that the Attorney General's Office only has one criminal complaint on file from 2008 for the crime of domestic violence against a family member. The State requested the rescission of provisional measures regarding Sara Paola Pinzón, Luz Mery López, and their family members.

17. The representatives affirmed during the hearing that the risk that Sara Paola Pinzón López and her family face remains in full effect. They indicated that although the State declared that it did not know the location of these family members, during December 2008 and January 2009 some police officials made calls to the residences and cellular phones of Pinzón family members, a communication tactic that was never agreed upon and that unnecessarily places the beneficiaries on alert. The representatives accepted that not all facts have been reported in a timely manner, but despite this they find that from this situation it does not necessarily follow that there is a complete absence of risk. They further reported that on April 17, 2009, Ms. Sara Paola Linzón López received at her home "a visit from persons who identified themselves as agents of the national police, [declaring] to have come on behalf of the lawyer collective." Ms. Pinzón allowed these alleged agents to enter her apartment and asked them to identify themselves; however, only one of them spoke up and indicated that he was part of the local police command despite not wearing the proper attire for his public position. The representatives confirmed that during the monitoring and coordination meeting held on April 8, 2010 the representative from the Attorney General's Office reported that the investigation was closed after having found that "the actions taken by the police agents were according to the legal provisions [in place] for these cases."

18. On the other hand, in their last brief the representatives indicated that on May 8, 2010 three unknown individuals showed up at the residence of Ms. Luz Mery Pinzón López in the city of Villavicencio, calling themselves lawyers and asking her to advance them legal fees for eventual compensation claims. These individuals also claimed to want to represent her and her sisters before national authorities, saying that the "lawyer collective isn't the only one who could represent them" and that the collective only "wants to get rich off the victims." One of these "alleged lawyers" handed over a business card "with the name Hernán Páez Zapata" and claimed to be an official with the Public Ombudsman who had represented other victims of the Mapiripán massacre in litigation, having found the victims' information on the internet. In light of this event, the representatives of the beneficiary launched an investigation into these "so-called lawyers" and found that there is no case ongoing, the man who identified himself does not actually work for the Public Ombudsman, and it is evident that in the Court's Judgment, the home addresses of the victims are not present. The representatives also reported that the previous July 13, 2010 a man "named Armando Céspedes Espinoza," who identified himself as an attorney, called the Pinzón residence asking for Ms. Luz Mery with whom she had filed her complaint. Ms. Luz Mery Pinzón "asked again who she was speaking with" and Mr. Céspedes responded "that he and his friends work with the CTI (Technical Investigation Branch of the Prosecutor's Office)." After this occurrence, the representatives requested that the State "verify the accuracy of this information, initiate disciplinary investigations [...] as these persons held themselves out to be public officials[.]" and that "in the event that they were not, [the representatives] regard these events as constituting a clear case of harassment directed towards the

beneficiaries.” Consequently, the representatives regard the risk motivating the grant of provisional measures in this case to continue in full force, for which reason they request that the measures continue.

19. In its most recent observations, the Commission declared its concern over the closure of the disciplinary investigation (*supra* Considering 17) and requested that the Court order the State to produce updated and detailed information regarding the harassments aimed at the Pinzón López family by third parties or others who claim to work for the State (*supra* Considering 18).

20. The Court acknowledges the recent events as told by the representatives of the beneficiaries Sara Paola Linzón López and Luz Mery Pinzón López, with particular emphasis on the alleged threats against the beneficiaries which may have been carried out by State security agents (*supra* Considering 17, 18). However, the beneficiaries and their representatives are nonetheless required to provide all necessary collaborative efforts in order to bring about effective implementation of these provisional measures. The Court exhorts that the State present a consensual risk assessment study for the beneficiaries. For this study, it is essential that the beneficiaries’ whereabouts be known and that they and their representatives collaborate in data collection efforts for the purposes of this study.

4) *Regarding Luís Guillermo Pérez*

21. The State pointed out the representatives’ report in April 2010 that Mr. Luís Guillermo Pérez does not presently live in the country. Furthermore, the State argued that it has not received from the beneficiary or the representatives “statements [indicating] new threats” against his life or right to humane treatment, nor has it received any requests for security measures in his favor. The State is of the position that effective implementation of provisional measures is subject to the condition that the beneficiary reside in the territory of the State that has been ordered to provide such measures. The State, finding the conditions of extreme gravity and urgency lacking in Mr. Pérez’s case, requested an evaluation of the need for keeping provisional measures active in his favor.

22. Regarding Mr. Luís Guillermo Pérez and his family members, the representatives reported that they left the country due to the threats and persecution he received for his participation as an attorney in civil proceedings in this case. In their last brief of July 29, 2010, the representatives reported that Mr. Pérez, who was Secretary of the International Federation for Human Rights (FIDH) and a witness before this Court, decided to return to Colombia as a member of the José Alvear Restrepo Lawyer Collective on July 30, 2010. In addition, the representatives reported that at the end of October 2009, the beneficiary’s residence in Belgium was raided, and thieves stole “an external memory device where he had stored all of his personal and professional information [dating from] the last ten years.” They also reported that “on April 22, 2010, an individual who claimed to be speaking in the name of the president of Colombia Álvaro Uribe Vélez telephoned the home of Mr. Pérez’s mother in Brussels while he was away on a trip” and stated that “they wanted to know about the little monkey” and that “soon [he] would receive news from [the caller].” They also reported that on March 25, 2010, during a meeting in the offices of the Federal Parliament of Belgium, Mr. Pérez requested to the Director of the DAS that he unseal the intelligence information collected on him and his family in which “[they] attempt to link [him] with a guerrilla group, first as a perpetrator of the ‘legal war’ waged by the ELN [National Liberation Army] and later as a member of the ‘support wing and the psycho-political war of the FARC

[Revolutionary Armed Forces of Colombia].” To this, the DAS director responded that such would only be possible by judicial order. Mr. Pérez then joined a civil suit against DAS officials for the “so-called ‘wiretapping scandal.’” Thus, on April 10 and 12, 2010, the National Prosecution Unit, Supreme Court Division, requested that the DAS certify “whether intelligence information exists” on several people, among them Luís Guillermo Pérez. On May 13, 2010, the Director of the DAS responded by indicating that the Analysis and Counterintelligence branches, as well as the external counterintelligence group all had information on Mr. Pérez. Finally, the representatives reported that “[a]ll the State authorities have been notified of Mr. Luís Guillermo Pérez’s return” and that some of them, such as the “Human Rights Division of the Ministry of Justice and the Interior[,]” have declared their willingness to adopt the provisional measures necessary such that [he] may return to the country.”

23. The Commission found that “because the beneficiary Luís Guillermo Pérez is allegedly about to return to [Colombian] national territory where he has been the target of harassment, [...] it is not appropriate to consider rescission of the provisional measures in his favor.”

24. In other matters, the Court has found that a beneficiary’s exit from the territory of the State that was obligated to protect him or her implies that the provisional measures have been rendered moot.⁵ In this case, the State has not provided any information as to the measures taken for the beneficiary’s benefit, nor did it refer to his departure from Colombia until recently.

25. The Court notes the representatives’ reporting on Mr. Pérez’s return to Colombian territory, yet they have not substantiated how his return places him in a situation of extreme gravity and urgency. Furthermore, the information submitted on Mr. Pérez is not clearly related to the grounds for the present measures, that is, his participation as a witness and attorney in civil proceedings regarding the Mapiripán massacre. The Tribunal thus finds it necessary that the representatives and the Commission explain and substantiate the relationship between Mr. Pérez’s return to Colombia and any risks he could face there.

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26. In order for the Court to order provisional measures, Article 63(2) of the Convention requires that three conditions be present: i) “extreme gravity”; ii) “urgency”; and iii) the need to “avoid irreparable damages.” Similarly, these three conditions must be present in order for the Court to maintain any mandated protection in place. If one of them has ceased to be applicable, it falls to the Tribunal to assess the relevance of continuing with the mandated protection; this is to be done without prejudice to any future order of measures in the case of all three conditions again coming together at a later date. In addition, when ordering provisional measures, the standard for assessing the required elements is *prima*

⁵ Cf. *Matter of Lysias Fleury*. Provisional Measures regarding Haiti. Order of the Inter-American Court of Human Rights of November 25, 2008, Considering clause eighteen; *Case of 19 Tradesmen*. Monitoring Compliance with Judgment and Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of July 8, 2009, Considering clause eighty-one; and *Matter of Wong Ho Wing*. Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering clause twenty-two.

*facie*⁶; however, maintenance of provisional measures requires a more rigorous evaluation on the part of the Court regarding the persistence of the situation that gave rise to these measures.⁷

27. In the present matter, the State requested the rescission of provisional measures, arguing *inter alia* that “there is no real possibility of implementing provisional measures.”

28. The Tribunal notes that if a State requests rescission or modification of mandated provisional measures, it shall present sufficient evidence and arguments that enable the Court to conclude that the risk or threat no longer fulfills the requirements of extreme gravity and urgency in avoiding irreparable harm. In turn, the beneficiaries’ and the Commission’s burdens of proof and persuasion will increase as time passes and no new threats materialize.⁸ It is also certain that the non-existence of new threats could be owed precisely to the effectiveness of the protection provided or the dissuasion caused by the Court’s Order. The Court has found that the passage of a reasonable period of time without threats or acts of intimidation, together with the lack of an imminent risk, may entail the rescission of provisional measures.⁹

29. When ordering provisional measures in this case, it was found that the objective of the same was to protect those persons (and their family members) that the then-President of the Court had either required to give sworn written statements (affidavits) or to appear as witnesses in the public hearing before this Court. Consequently, the protection of their lives and right to human treatment via urgent measures was to enable *inter alia* that they could give their testimony absent any sort of coercion, threats, or reprisals. At that time, such was essentially the aim of these provisional measures.

30. Later, upon ratification of the measures ordered by the President, the Court considered the fact that the persons benefiting from these urgent measures had already given their statements and that some of them had expressed fear in doing

⁶ Cf. *Case of Raxcacó Reyes et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of August 30, 2004, Considering clause ten; *Matter of Guerrero Larez.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering clause fourteen; and *Matter of Alvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of May 26, 2010, Considering clause fourteen.

⁷ Cf. *Matter of the Kankuamo Indigenous Community.* Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of April 3, 2009, Considering clause seven; *Matter of A. J. et al.* Provisional Measures regarding Haiti. Order of the Inter-American Court of Human Rights of September 21, 2009, Considering clause eighteen; and *Matter of the Monagas Judicial Confinement Center (“La Pica”); Capital Region Penitentiary Center Yare I and Yare II (Yare Prison); Penitentiary Center of the Central-Occidental Region (Uribana Prison); and Capital Judicial Confinement Center El Rodeo I and El Rodeo II.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering clause four.

⁸ Cf. *Case of Carpio Nicolle et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, Considering clause eighteen; and *Matter of Ramírez Hinojosa et al.* Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of February 3, 2010, Considering clause thirty.

⁹ Cf. *Matter of Gallardo Rodríguez.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of July 11, 2007, Considering clause eleven; *Matter of Pilar Noriega García et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering clause fourteen; *Matter of Leonel Rivero et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of November 25, 2008, Considering clause fourteen; and *Case of Lilliana Ortega.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 9, 2009, Considering clause forty.

so. For that reason, under the circumstances of this case, the Court found that those persons were still to be regarded as facing a situation of extreme gravity and urgency.

31. To ascertain whether a situation of extreme gravity and urgency in avoiding irreparable harm exists or persists, the Court may assess the totality of factors, including political, historical, cultural, or any other sort of circumstances affecting the beneficiary or placing him or her in a vulnerable situation at a particular moment capable of infringing his or her rights. This situation may increase or decrease in time, depending on innumerable variables; but, as has already been stated, only extreme and urgent situations will be suited to protection via provisional measures.¹⁰

32. The Court notes that a contradiction in terms may exist between what the representatives and the Commission denote a "situation of permanent risk" and the "temporary" nature of provisional measures as a mechanism of protection for specific situations of risk and vulnerability. Consequently, the information submitted is not sufficient to assess the real, present risk that each of these persons may face in the context of the aforementioned criteria. However, the Court finds that the vulnerability that the beneficiaries and their families face as victims of the Mapiripán massacre and, in particular, due to their forced displacement, has not been completely eliminated.

33. In turn, the Tribunal notes and stresses that these provisional measures have not been sufficiently or adequately implemented by the State since the time of their ordering. In some cases, the lack of communication between beneficiaries, representatives, and State authorities has brought about this situation. Furthermore, instances of internal forced displacement have affected the victims' family members and have made it difficult to adjust compliance with provisional measures to the particular needs of each family group. However, the State has not shown that such was a sufficient reason to fail to comply with the Court's Order and, primarily, it has neither conducted nor provided risk assessment studies on the beneficiaries despite having agreed to perform them.

34. The Tribunal has observed in this matter that from the information provided it is evident that one of the greatest obstacles to the implementation of these provisional measures is the lack of sufficient and permanent communication between the beneficiaries and the State in agreeing to the terms of implementation and knowing the risks faced by the beneficiaries. This has led to the conclusion that the provisional measures cannot be adequately implemented and therefore lack effect. The Tribunal regards the presentation of observations and information concerning compliance with provisional measures as an essential component of the same as it constitutes a duty on the part of the State, the beneficiaries (or their representatives), and the Inter-American Commission.

35. In the present matter, the information necessary to assess the request to rescind provisional measures has not been supplied. For this reason, the Tribunal will keep them active for a period of six months and will consequently require that the Commission, the representatives, and the State provide complete and detailed information containing the relevant elements of proof in order to determine the need (or not) to maintain these provisional measures in place. The Tribunal cautions that

¹⁰ Cf. *Case of Liliana Ortega*, *supra* note 10, Considering clause twenty-two; *Matter of the Monagas Judicial Confinement Center ("La Pica")*; *Capital Region Penitentiary Center Yare I and Yare II (Yare Prison)*; *Penitentiary Center of the Central-Occidental Region (Uribana Prison)*; and *Capital Judicial Confinement Center El Rodeo I and El Rodeo II*, *supra* note 8, Considering clause thirty; and *Case of Mack Chang et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of November 16, 2009, Considering clause twenty-one.

in the event no specific, detailed, updated, and concrete information is presented to determine the risk faced by these beneficiaries, the provisional measures will have no effect.

36. In particular, it is appropriate to stress to the State the requirement contained in the Operative portion of this Order which calls for an assessment of the present risks facing the beneficiaries. In that assessment, the State shall: a) identify and establish differences of degree regarding the risk affecting each individual beneficiary; b) carefully assess each individual situation, including the existence, characteristics, and origin of the risk; and c) appropriately define the specific measures and means of protection that would be adequate and sufficient to avoid the materialization of said risk. For this purpose, the beneficiaries and their representatives shall provide their full cooperation to the State and shall facilitate the conduct of this evaluation.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

By virtue of the authority conferred upon it under Article 63(2) of the American Convention on Human Rights, and Articles 27 and 31 of its Rules of Procedure,

DECIDES:

1. To maintain the present provisional measures mandated by the Tribunal in its Order of June 27, 2005 in place for six months, pursuant to the terms of Considering clauses 35 and 36 of the present Order, and for the benefit of the following persons and their family members: 1. Carmen Johana Jaramillo Giraldo, 2. Esther Pinzón López, 3. Sara Paola Pinzón López, 4. María Teresa Pinzón López, 5. Yur Mary Herrera Contreras, 6. Zully Herrera Contreras, 7. Maryuri Caicedo Contreras, 8. Nadia Marina Valencia Sanmiguel, 9. Yinda Adriana Valencia Sanmiguel, 10. Johana Marina Valencia Sanmiguel, 11. Gustavo Caicedo Contreras, 12. Rusbel Asdrúbal Martínez Contreras, 13. Roland Andrés Valencia Sanmiguel, 14. Ronald Mayiber Valencia Sanmiguel, 15. Luis Guillermo Pérez, 16. Nory Giraldo de Jaramillo, 17. Marina San Miguel Duarte, 18. Viviana Barrera Cruz, 19. Luz Mery Pinzón López, and 20. Mariela Contreras Cruz.

2. To require that the Inter-American Commission on Human Rights and the representatives of the beneficiaries submit information before October 22, 2010 concerning the present risk faced by each of the beneficiaries (mentioned in the Operative paragraph *supra*) and the measures necessary to overcome that risk pursuant to Considering clause 35 of the present Order.

3. To require that the State present by November 15, 2010 a brief containing a risk assessment for the beneficiaries pursuant to Considering clause 36 of the present Order. In that brief, the State shall address any remarks from the representatives and the Commission concerning this risk as mandated in Operative paragraph 2.

4. To require that, once provided with the information required of the State in the preceding Operative paragraph, the Inter-American Commission on Human Rights and the representatives submit their pertinent observations within four and six weeks, respectively, from the date of service of the State's brief.

5. To request that the Secretariat serve notice of the present Order on the State, the Inter-American Commission on Human Rights, and the representatives of the beneficiaries of these measures.

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 Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary