

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS  
OF NOVEMBER 25, 2010**

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

**MATTER OF THE COLOMBIAN COMMISSION OF JURISTS**

**HAVING SEEN:**

1. The brief of the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission" or the "Commission") of November 9, 2009, and attachments, whereby it filed with the Inter-American Court of Human Rights (hereinafter the "Inter-American Court," the "Court," or the "Tribunal") a request for provisional measures pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention") and Rule 26 of the Rules of Procedure of the Court (hereinafter the "Rules of Procedure") with the aim of requiring that the Republic of Colombia (hereinafter the "State" or "Colombia") safeguard the lives and right to humane treatment of the members of the Colombian Commission of Jurists (hereinafter "CCJ").

2. The alleged facts upon which the present request for provisional measures presented by the Commission is based, to wit:

a) During 2003, various State officials accused the members of the CCJ of being "the legal arm of the FARC," the "political-legal spokesmen for the FARC," "inclined to engage in subversive activities," and "fomenters of revolution." In light of the impact that such allegations could have on the right to humane treatment of its members, the CCJ requested that the then-President of Colombia act in order to protect the rights of the organization pursuant to his constitutional duty to do so, which was denied;

b) On September 8, 2003, the then-President of Colombia had accused human rights organizations of being "human rights traffickers," "human rights politicians," and "to be in the service of terrorism." When faced with a petition to correct his remarks, the President apologized only for the tone he used and declared that "when it comes to Colombians' security we will not show any weakness." The State also announced its intention of initiating an investigation into the activities of non-governmental organizations ("NGOs") present in the country in order to avoid that they be used "to attack the State." Later, some paramilitary groups voiced support for the presidential speeches and confirmed that, in the Commission's judgment, human rights organizations were in the paramilitaries' sights;

c) On December 8, 2003, the Inter-American Commission granted precautionary measures (MC 705-03) in favor of the members of the CCJ, basing its decision on the fact that these individuals were experiencing a situation of gravity and urgency. The Commission requested that the State take all necessary steps to protect the lives and right to humane treatment of the CCJ's members so that they could continue their work promoting and defending human rights. The State was also requested to agree upon the measures to be adopted with the beneficiaries as well as to submit reports on progress in their implementation, with the goal of clarifying the basis for the accusations against the beneficiaries;

d) After the grant of precautionary measures, the beneficiaries provided information as to the hostile situation faced by human rights defenders in Colombia in general, and the CCJ in particular, as a consequence of acts committed on the part of State agents. Specifically, two members of the CCJ – Ana María Rodríguez and Lina Paola Malagón – received death threats in March 2008 and March 2009, respectively. In December 2008, alleged acts of harassment were committed in Cartagena against members of the CCJ;

e) In addition, the beneficiaries reported on allegedly illegal activities undertaken by the Administrative Department of Security (hereinafter, the Spanish acronym "DAS" for "*Departamento Administrativo de Seguridad*")<sup>1</sup> against human rights organizations, including various surveillance activities, "neutralization" operations, offensive intelligence, and baseless persecutions with the goal of following, controlling, and intimidating such "entities with pro-opposition tendencies."<sup>2</sup> On May 7, 2009, the CCJ lodged a petition before the Attorney General of Colombia and the DAS in order to access intelligence archives related to the CCJ and its members, as well as the outcome of criminal and disciplinary investigations begun to determine the possible responsibilities of DAS agents. In this regard, the CCJ said it had not gained full access to the investigatory records, and that these records had been subject to theft and deletion of information on the part of DAS agents themselves to avoid journalistic and judicial inquiries. The DAS affirmed on May 28, 2009 that its records do not contain "information or intelligence documents against either the CCJ or Gustavo Gallón [director of the CCJ]." However, the Attorney General's Office announced that in the course of its investigation into illegal information intercepts attributed to DAS agents, it planned to call Gustavo Gallón to testify as a victim of such activities. Furthermore, various media outlets reported that Mr. Gallón was the target of constant monitoring as part of the DAS's operation "Rattlesnake." These situations only add to the continuity of official statements attempting to discredit the work of human rights organizations in Colombia, which in turn create insecurity for their members and subject them to a highly vulnerable situation that directly affects their rights to life, safety, personal liberty, honor, dignity, and freedoms of thought and expression.

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<sup>1</sup> The members of the CCJ also mentioned the existence of specialized intelligence groups within the Administrative Department of Security (DAS). They confirmed that between the end of 2003 and late 2004, the Special Intelligence Group (G-3) was created "to collect intelligence on different human rights organizations," "for Executive decision-making in investigations and to restrict and neutralize opposition-leaning groups."

<sup>2</sup> According to the Commission as indicated in the newspaper *El Tiempo*, "the G-3 created a sort of guide for surveillance and harassment [...] to investigate these targets."

- f) Finally, the Commission referred to information presented by the State before the Commission on September 30, 2009<sup>3</sup> regarding the present matter.
3. The Commission's arguments upon which it bases its request for provisional measures, namely:
- a) The situation of extreme gravity and urgency is verified in this case because, despite the precautionary measures granted by the Commission, the beneficiaries continue to be the target of harassment, intimidation, and monitoring, all of which have recently intensified. This, together with the existence of intelligence groups specialized in monitoring human rights organizations and the lack of an effective response to clarifying allegations against the beneficiaries, demonstrates the situation of vulnerability, helplessness, and uncertainty in which the beneficiaries find themselves. Faced with the potential for violations of their rights to life and humane treatment, their situation is one of serious risk of imminent, irreparable harm. The adversarial context in which human rights defenders must work is further compounded by their historical lack of protection in Colombia, and in particular by the statements of State officials set on discrediting their work; and,
- b) The damaging effect of the alleged acts goes beyond the direct victims in this case, diminishing the likelihood that other human rights defenders will continue to engage in their work and placing all such workers in a situation of extreme vulnerability and risk.
4. Inter-American Commission's motion that the Court obligate the State to take the following measures: a) to adopt, without delay, all the measures that may be necessary to guarantee the lives and right to humane treatment of the beneficiaries; b) to take all actions that may be necessary to guarantee that the CCJ members are able to continue conducting their work in the promotion and defense of human rights in Colombia; c) to consult with the beneficiaries as to the most appropriate means to implement the protective measures so as to ensure their effectiveness and relevance; d) to carry out an investigation into the underlying facts prompting the request for provisional measures as a preventive measure against the recurrence of new threats to the lives and wellbeing of the beneficiaries; e) to report on the steps taken with regard for the aforementioned prescriptions. The Commission also requested that the design and implementation of the protective measures be carried out by the State in cooperation with the beneficiaries in the following ways: i) the persons assigned to provide protection for the beneficiaries must not have any link whatsoever to the DAS; ii) the protective measures must provide for the security of the individuals as well as that of their dwellings in accordance with their needs and preferences; and, iii) the beneficiaries should be provided with appropriate means of communication to remain in contact with each other and with security personnel.
5. The communication of the Secretariat of the Court (hereinafter the "Secretariat") of November 9, 2009 whereby, pursuant to instructions from the President of the Court,

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<sup>3</sup> In the Request for Provisional Measures, the Commission indicated that this information was presented by the State on September 30, 2009 as "observations" on the petitioner's brief requesting provisional measures. However, the State refers to this same communication with the date of September 29, 2009.

it requested that the State, as provided for in Article 26(5) of the Rules of Procedure, submit its relevant observations on the request for provisional measures by November 16, 2009.

6. The State's brief of November 17, 2009 whereby it presented its arguments discussing its view as to the inappropriateness of the *prima facie* character of evidentiary support underlying a request for provisional measures. The State argued, *inter alia*, that while recognizing that in issuing protective measures the Court does not require, in principle, evidence of the facts which *prima facie* appear to meet the requirements of Article 63(2) of the Convention, maintaining protective measures in place requires the Court's assessment as to the ongoing nature of the gravity, urgency, and the need to avoid irreparable harm that prompted them. The State also noted that the Commission failed to consider – much less invalidate – the State's arguments, instead it “merely outlines in general the arguments contained in the State's brief submitted on September 29, 2009.”

7. The State's responsive arguments on the allegations of the Inter-American Commission that provide the foundation for its request for provisional measures, namely:

a) Regarding the March 2008 and March 2009 alleged death threats received by CCJ members Ana María Rodríguez and Lina Paola Malagón, respectively, the State reported that it had ordered the commencement of an investigation in which a series of charges had been filed. The prosecution has incorporated these efforts into investigations Nos. 110016000099200800003 and 110016000049200904035, respectively. The State noted that Ms. Malagón did not accept the protective security measures offered her;

b) Regarding alleged acts of harassment on the part of State agents directed at CCJ members on December 11, 2008, in Cartagena, it indicated that one such incident had been a simple misunderstanding, and in the case of another, “if the alleged irregular conduct the beneficiaries refer to is deemed to have in fact occurred, the necessary steps will be taken to ensure that the legitimate work of the CCJ is respected and in no way obstructed”;

c) Concerning the alleged illegal intelligence activities engaged in by the DAS, Colombia stressed that these acts were not State policy. On this point, the State has already expressed its rejection and condemnation and has proclaimed its interest in identifying, trying, and punishing those responsible for these alleged criminal acts. It added that it has recognized and supported on many occasions the work of various NGOs engaged in the defense and promotion of human rights, and that this is of great significance to strengthening democracy and the rule of law in Colombia;

d) Concerning the argument presented by the Inter-American Commission, whereby it sought to link incidents of harassment with State intelligence activities, the State reported that it is unaware of any facts on which the Commission could be basing such an assertion, but that such hypotheses must be properly tested within the framework of a criminal investigation. It noted that the petitioners are a civil party to just such an investigation. The State furthermore remarked that the alleged illegal intelligence activities undertaken by DAS members are the subject of an investigation by the Inspector General as well as the Attorney General's Office. In this regard, the State referred to a

series of ongoing criminal investigations and asserted that the relevant authorities are carrying out these investigations in a serious and impartial manner;

e) That it has adopted various legislative and administrative measures with the aim of guaranteeing the ultimate cessation of the alleged illegal intelligence activities on the part of DAS members. The State also stressed that it regards intelligence services as a legitimate and necessary activity in order to guarantee security and domestic order in a "Social State of Laws" (in Spanish, "Estado Social de Derecho"), and that the State must in any case engage in intelligence activities only in accordance with strict rules and regulations that find support in the State's policy of strictly observing human rights protections, and

f) Finally, concerning the State's own offer of protective measures for the life and physical integrity of the CCJ members, the State indicated that the Ministry of the Justice and the Interior and the National Police, respectively, maintained their offer of material measures of protection and preventive security for the benefit of CCJ members, but the representatives of the CCJ had not accepted. While the representatives have repeatedly requested the adoption of policy or political measures and not material ones, the State regards material measures as necessary to reduce the risk to the lives and personal safety of the beneficiaries. The State again stressed its willingness to exhaust all efforts in safeguarding the lives and physical integrity of the CCJ members.

8. The State's conclusions whereby it moved that the Court deny the request for provisional measures. In that regard, the State indicated that: a) the request for provisional measures lacked justification because the situation in question did not meet the requirements established in Article 63(2) of the Convention; b) it noted an absence of an analysis or appraisal of the information and arguments the State presented to the Inter-American Commission in the proceedings before it, in particular with the Commission failing to consider the fact that on September 29, 2009 the State submitted a brief containing precise and comprehensive information negating the existence of an urgent threat of risk *vis-à-vis* the non-recurrence guarantees it had adopted; c) the legislative, criminal, disciplinary, and political measures adopted, as well as the strengthening of existing participatory avenues for human rights defenders so that the acts giving rise to the present petition do not recur; and d) the State questioned the need to award provisional members in the present case, bearing in mind the negative disposition of the CCJ members in accepting material measures of protection; these same measures the State regards as fundamental in responding to instances of extreme gravity and urgency, lest they end in irreparable injury.

9. The communication of the Secretariat of November 23, 2009 whereby it requested that the Inter-American Commission specify the protective measures it was requesting; how these measures were different from those offered by the State; the manner in which they were to be implemented; whether the CCJ had rejected these measures; and, if so, the reason for such rejection. Conversely, the Secretariat requested that the State: a) provide information on the measures it has offered or would be willing to offer the beneficiaries and the State agency that would be responsible for their implementation, and b) the State's willingness to implement these measures in cooperation with CCJ members.

10. The State's brief of December 3, 2009 whereby it responded to the Secretariat's communication of November 23, 2009 and submitted the following information:

a) Regarding point a), the State reported that the proposal of protective measures for the beneficiaries consisted in services provided by the Human Rights Protection Program for the Ministry of Justice and the Interior, the Protection and Assistance to Victims and Witnesses Program in the Attorney General's Office, and other efforts on the part of the National Police.

b) Regarding point b), the State provided information as to its various offers of protection to the CCJ as well as the steps it has taken to open the lines of communication between itself and the beneficiaries so that they might better voice their requests. In this sense, the State again emphasized its commitment to guaranteeing the lives and personal safety of the beneficiaries and its willingness to employ a broad array of means and capabilities to carry out that objective.

11. The brief of the Inter-American Commission of December 4, 2009 in response to the Secretariat's communication of November 23, 2009 in which it indicated that in the context of securing precautionary measures the State and the potential beneficiaries debated "what would be the most appropriate security measures to adopt in a situation like the one described in the request for provisional measures. The State offered personal protection plans from the relevant security entities, while the potential beneficiaries responded with a series of arguments that essentially took issue with the inefficacy of taking such measures in light of the continuing remarks of the President of the Republic and other senior state officials," as well as the general lack of access to information detailing the intelligence operations undertaken either by the State or at its encouragement. Any protective measure must be based on the "circumstances, needs, and preferences of the beneficiaries." The Commission added that in order for a protective mechanism to achieve the desired effect, the State retains the obligation to take steps necessary to identify and eradicate the source of the risk, especially considering the lack of confidence that the CCJ members have shown as to the State's ability to protect them. The Commission argued that, were they to be granted, the pending provisional measures must include an unequivocal call that the State desist from engaging in any act that could endanger the beneficiaries, including the immediate cessation of all intelligence activities concerning them, and that it provide access to the information that has been collected and revealed by way of these activities. Additionally, the Commission opined that the measures in question should permit certain flexibility so that the parties may define for themselves the particulars of implementation.

12. The communication of the Secretariat of December 17, 2009 whereby it informed the Inter-American Commission and the State that they had until January 20, 2010 in order to present their relevant observations on the briefs each other had submitted.

13. The Commission's brief of January 20, 2010 whereby it reiterated its remarks of December 4, 2009 and indicated that the situations previously described (*supra* Having seen 2, 3) had placed the potential beneficiaries in a position of great risk and vulnerability, providing sufficient elements to show *prima facie* that the principle objective continued to be the immediate eradication of the source of the risk.

14. The State's brief of January 20, 2010 whereby it indicated that in the Commission's brief the key points of the request are not clarified and do not fulfill the necessary procedural requirements for the adoption of provisional measures. The Inter-American Commission bases its arguments on events that occurred in the past and does

not provide information supporting the present existence of those events. The State argued that the Commission cannot show that the protection offered to the beneficiaries in a repeated fashion by various state agencies has been incapable of meeting the task. The State has not had the opportunity to put any sort of measures in place given the beneficiaries' disinclination to accept them. The State further added that, on the subject of precautionary measures, the fact that these "must be carried out in cooperation with the beneficiaries leads to a situation that could be interpreted as a negation of the State's own protective measures." In closing, the State argued that the request for provisional measures in favor of the members of the CCJ should be rejected.

15. The communication of the Secretariat of February 1, 2010 whereby, pursuant to instructions from the Plenary of the Court (hereinafter the "Plenary"), it requested that the State submit additional information. The Tribunal also requested that the State submit copies of Decrees No. 2816 and No. 3600, and report on the specific measures that the Human Rights Protection Program for the Ministry of Justice and the Interior intended to immediately and effectively provide to the CCJ members. In relation to Decree No. 3600, which provides a replacement mechanism for the storage of intelligence files, the Secretariat requested that the State indicate the particulars of this new storage process. It also requested that the State remit a copy of the DAS documents dealing with human rights and human rights policy that the State mentioned in its observations of January 21, 2010. The Secretariat furthermore requested that the Commission report on the threats and harassment that members of the CCJ have received over the last six months, specifying the place, date, and documentation corresponding to each. Likewise, the Commission was to report on specific actions that it believed the State should employ in providing provisional measures in favor of the CCJ members.

16. The State's brief of March 23, 2010 whereby it submitted the information solicited by the Court. Therein, the State submitted copies of Decree No. 2818 of August 22, 2006; Decree No. 3170 of 2007, which amended Decree No. 2816; Public Law 1288 of March 5, 2009; and, Decree No. 3600 of September 21, 2009, which acts as a check on Public Law 1288. The State also submitted copies of the relevant DAS documents on human rights: i) Directive OPLA 022 of December 24, 2009; ii) Directive OPLA 021 of December 24, 2009; iii) Directive OPLA 013 of May 13, 2009; iv) Directive OPLA 016 of November 28, 2009; v) Directive OPLA 005 of March 3, 2010 "Application and Fulfillment Memorandum 07 of December 1, 2009 – Special Prosecutor for the Defense of Human Rights"; vi) Directive OPLA 025 of September 3, 2009"; and, vii) Directive OPLA 007 of January 10, 2007." The State indicated that the DAS's policy document concerning human rights ("DAS Human Rights Guide") will be officially published on April 14, 2010. Additionally, the State made reference to the following factors:

- a) In relation to the specific measures that could be provided to the CCJ members in an immediate and effective fashion, pursuant to Article 24 of Decree No. 2816 of 2006, such actions would have to take place through an "emergency procedure." Decree No. 2816 provides a catalog of measures that are classified according to the circumstances that characterize the beneficiaries' particular situation. The classification follows two orders: i) preventive measures that include self-protection and self-security, National Police patrols, and instructional sessions on preventive measures; and ii) protective measures that can be further divided into hard and soft measures

b) In relation to the replacement mechanism for the intelligence archives, the State reported that it does not plan to stop saving intelligence and counterintelligence information, since this is a legitimate function of the State. The State wished to convey, however, that it will not save information obtained for discriminatory or political motives, making reference to Articles 18, 19, and 20 of Public Statute No. 1288 of 2009. The State concluded that "gathering information, intelligence, and counterintelligence will continue to take place in compliance with the reigning applicable norms, which in today's day and age are clear, specific, and have fixed limits in light of the respect owed the human rights of all citizens."

17. The brief of the Inter-American Commission of March 29, 2010 whereby it indicated that:

a) Regarding the threats and harassment received by members of the CCJ within the last six months, these "have been occurring in a context of accusations on the part of State agents, which has served as a catalyst for different incidents of threats, harassment, monitoring, and spying against human rights defenders." In this regard, the Commission remarked that "during 2009 and the first few months of 2010, human rights defenders in Colombia, including members of the CCJ, continued to face a hostile atmosphere with the authorities and an increase in the persecution they faced in their work safeguarding fundamental rights." In this respect, the Commission alluded to reports from the UN Special Rapporteur on the situation of human rights defenders, the UN Committee Against Torture, and the UN's independent expert on minority issues all referring to the situation of harassment, threats, surveillance, and spying that human rights defenders in Colombia face. In addition, the Commission recalled that in March 2009, a member of the CCJ, Lina Paola Malagón, received threats for her work and was "branded a guerilla," causing her to have to change her residence and live abroad. The Commission highlighted the petitioners' assertion that, upon their return to Colombia in January 2010, Ms. Malagón was the target of surveillance from a "public transportation vehicle." The Commission added that in a document provided by the petitioners, the same petitioners argued that between 2009 and 2010 in the course of criminal proceedings against DAS officials, the CCJ was informed that "other members of this organization have been the target of illicit activities on the part of [a] State security entity, just as was the case with attorney Alejandra Vega Rodríguez";

b) According to information provided by the CCJ, "the majority of evidence of illicit DAS activities as to monitoring and harassment of human rights defenders was clandestinely removed from their own installations." The CCJ reported to the Commission that this DAS intelligence information was transmitted to paramilitary groups, which – in the Commission's view – evidenced the "well-founded fear that the disappeared information is in the hands of paramilitary groups [implying] the continuity and imminent nature of a situation of extreme gravity, urgency, and irreparable harm";

c) "In the last two months, the risk factors related to the trial of cases involving the CCJ are elevated." This rise is owed to the fact that investigations and trials are all moving forward. Specifically, the Commission referred to the criminal investigation into the then-Vice President of the Republic's alleged links to the United Self-Defense Forces of Colombia (in Spanish: "*Autodefensas Unidas*");



*de Colombia*"), in which he was called to give testimony. This alone constitutes an increased risk, above all for Gustavo Gallón Giraldo;

d) Finally, "CCJ members have been the target of serious accusation on the part of Colombian government agents, that [were] followed by threats and harassment. In addition to the foregoing, it is necessary to consider the seriousness of the intelligence work undertaken by the State to persecute and harass human rights defenders, including the potential beneficiaries. There has also been a general lack of information and of a clear explanation as to the purpose of these activities. What's more, the demands of several ongoing cases have the effect of converting the CCJ members into the targets of further threats and harassment, as well as enhancing the level of danger they face. These circumstances not only have placed the CCJ members in a position of risk and vulnerability, but also constitute sufficient elements tending to show *prima facie* that the appropriate measure to be adopted in this case is the immediate eradication of the source of the risk."

18. The Secretariat's letter of May 31, 2010 whereby, pursuant to instructions from the Plenary, it requested that the Commission submit additional information before June 28, 2010. The Tribunal asked that the Commission include in its brief: a) the protective measures that the prospective beneficiaries would be willing to accept at that particular moment; b) whether there were any other measures to be solicited in addition to protective measures; and, c) its description of what avenues of cooperation the potential beneficiaries would be willing to take to coordinate planning and implementation of the measures with the State. The Court also asked the State to indicate: a) which state officials or organs would be in charge of implementing the protective measures, and b) what the available mechanisms are to facilitate the beneficiaries' participation in the planning and implementation of the protective measures so that they might stay informed as to progress with compliance.

19. The brief of the Inter-American Commission of June 23, 2010 whereby it submitted information offered by the CCJ on the situation of risk and imminent harm that its members face.<sup>4</sup> The Commission regarded the potential beneficiaries' information as confirming yet again the factual basis for the request for provisional measures. As with previous communications, the facts indicate that the members of the CCJ remain in a situation that subjects them to a risk of imminent harm. The Commission thus reiterated its request to the Court that it adopt provisional measures in the present case.

20. The brief of the Inter-American Commission of June 29, 2010 whereby it repeated its earlier points and went on to indicate, *inter alia*, that:

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<sup>4</sup> In this regard, the representatives of the CCJ indicated that, together with the Inter-Ecclesial Commission on Justice and Peace (ICJP), they are moving forward with measures before international human rights organizations to safeguard the rights of the communities of Curvaradó and Jiguamandó. They added that the members of the ICJP were allegedly the target of scare tactics by way of e-mail on April 26, 2010 and in a web-page publication on April 27, 2010. In both instances, accusations of criminal activity were hurled against both the ICJP and the CCJ, despite the ICJP's having already filed a public complaint to the contrary. Thus, the CCJ representatives concluded that the e-mail, the internet publication, and the threats serve to demonstrate "the context of persistent stigmatization against human rights defenders that attempts to present [their] legitimate defense work as an aggressive and deleterious act, and treating it as if it constituted a legal war against the State."

a) Regarding the protective or general security measures that the prospective beneficiaries would be willing to accept, the Commission indicated that the beneficiaries would not accept any measures incorporating standard personal security measures, owing to their contention that “there are indications that these security measures have been used as an information-gathering tool for State intelligence services on the activities, contacts, and movements of human rights defenders.”

b) The Commission noted the CCJ’s contention that the basic measures they required from the State were that the then-President of the Republic, as well as “the highest officials in the Executive branch [should] cease their defamatory and harassing statements against human rights defenders and their legal defense activities, and they should make public declarations on both the legitimacy of these human rights activities and in condemnation of attacks and harassment against them.” The Commission went on to transcribe the measures requested by the beneficiaries in its letter of March 15, 2010, to wit:

[a]mong the measures requested by the [CCJ] are: (i) to guarantee that the authorities conduct an investigation and prosecute those government employees who have made public statements [of condemnation] against the organization; (ii) to establish guidelines that guarantee the cessation of illegal monitoring activities on the part of State agents; (iii) to investigate incidents of threats and harassment against the organization and punish those responsible; (iv) to establish a special mechanism for investigations and trials when they implicate DAS activities; (v) to adopt measures that ensure that intelligence services show respect for human rights and are subject to both civil and judicial controls; (vi) to review the archives containing information on [CCJ] members and to remove information that is outside the scope of legitimate intelligence activities or that has been obtained in an illegal manner; and, (vii) to implement a purging mechanism for [these] intelligence archives.

21. The State’s letter of July 1, 2010 whereby it requested a continuance of twenty days in order to present the additional information the Tribunal requested concerning the present matter. The Secretariat’s letter of July 1, 2010 whereby, pursuant to instructions from the President, the State was given until July 19, 2010 to present the relevant information.

22. The State’s brief of July 30, 2010 whereby it submitted the information requested by the Court and indicated, *inter alia*, that:

a) Ever since the legal creation of the Program for the Protection of Persons in Specific Populations under the auspices of the Ministry of Justice and the Interior, its operation has depended on those institutions constitutionally and legally created to assist it, namely the National Police and the Administrative Department of Security (DAS).<sup>5</sup> Independently of which institution assumes the task of providing security measures, the responsibility to protect human rights defenders as well as social and community organizers will continue to belong to the State, in strict compliance with the Constitution, the laws, and relevant jurisprudence, as well as the human rights treaties to which Colombia is a signatory;

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<sup>5</sup> Regarding the process for dismantling the current regime of personal security protections in the DAS, the State reported that Article 1 of Decree No. 2271 of June 24, 2010 indicates that: “[t]he responsibilities facing the Program of Protection, under the auspices of the DAS, will gradually be reduced as the different stages of moving the case to the Ministry of Justice and the Interior are completed, which must be before December 31, 2010.”

b) The State offered as protective measures those of the aforementioned Program under the auspices of the Ministry of Justice and the Interior, to wit: means of mobilization, support for temporary relocation; other moving support; protective security measures; bulletproof vests; means of communication; and, finally, perimeter security reinforcements, including technical security systems.

c) The State reiterated its commitment to its obligations deriving from the American Convention and stated that it was not attempting to pass these obligations off on to private parties, but rather it simply intended to avail itself of their services, all while under the full supervision, control, and administration of the relevant entities.

### **CONSIDERING:**

1. Colombia has been a party to the American Convention since July 31, 1973, and, pursuant to Article 62 of the same, recognized the jurisdiction of the Court on June 21, 1985.

2. Article 63(2) of the American Convention states that, “[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable harm 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. In the terms of Article 72 of the Rules of Procedure of the Court:

1. At any stage of proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable harm 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 before it, the Court may act at the request of the Commission.

[...]

5. The Court, or if the Court is not sitting, the Presidency, upon considering that it is possible and necessary, may require the State, the Commission, or the representatives of the beneficiaries to provide information on a request for provisional measures before deciding on the matter requested.

[...]

4. The Court has indicated that provisional measures are of a dual nature: one precautionary and the other protective.<sup>6</sup> The precautionary nature of provisional

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<sup>6</sup> Cf. *Case of Herrera Ulloa v. Costa Rica* (“La Nación” Newspaper). *Provisional Measures regarding Costa Rica*. Order of the Inter-American Court of Human Rights of September 7, 2001. Considering clause four; *Matter of Belfort Istúriz et al. Provisional Measures regarding Venezuela*. Order of the Inter-American Court of Human Rights of April 15, 2010, Considering clause six; and, *Case of the Caracazo v. Venezuela. Provisional Measures regarding Venezuela*. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering clause four.

measures is linked to the framework of international disputes. In that sense, these measures seek to preserve rights at risk until such time as the controversy is resolved. The object and goal of the measures are to ensure the integrity and effectiveness of the decision on the merits, and thus to avoid disturbing the specific rights at issue, creating a situation that could render moot or otherwise distort the applicability of the final decision. Provisional measures permit this in order that the State in question may fulfill the final decision's mandate and, if necessary, to make the necessary reparations.<sup>7</sup> As to the protective nature of provisional measures, this Court notes that provisional measures transform into a true guarantee of a preventive character,<sup>8</sup> as they seek to protect human rights while also endeavoring to avoid irreparable harm to persons.<sup>9</sup>

5. As with both the preventive and the precautionary dimensions, litigants seeking provisional measures must fulfill the three requirements listed in Article 63(2) of the Convention, to wit: i) "extreme gravity"; ii) "urgency"; and iii) that they seek to "avoid irreparable harm to individuals." These three conditions are coexistent and must be present in all situations in which the Tribunal's intervention is requested.<sup>10</sup>

6. Regarding the issue of gravity, for the purposes of the adoption of provisional measures, the Convention requires that it be "extreme"; that is, that the seriousness must be at its most intense or highest level. The urgent nature implies that the risk or threat involved is imminent, which requires that the response to correct it be immediate. Finally, regarding damages, there must be a reasonable probability that such damages will materialize, and liability must not be limited to damage to repairable property or legal interests.<sup>11</sup>

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<sup>7</sup> Cf. *Matter of El Rodeo I and El Rodeo II Judicial Confinement Center. Provisional Measures regarding Venezuela*. Order of the Inter-American Court of Human Rights of February 8, 2008, Considering clause seven; *Matter of Belfort Istúriz et al.*, *supra* note 6, Considering clause six; *Case of the Caracazo*, *supra* note 6, Considering clause four.

<sup>8</sup> Cf. *Case of Herrera Ulloa v. Costa Rica ("La Nación" Newspaper)*, *supra* note 6, Considering clause four; *Matter of Gladys Lanza Ochoa. Provisional Measures regarding Honduras*. Order of the Inter-American Court of Human Rights of September 2, 2010, Considering clause six; and, *Matter of the Araguan Correctional Facility "Tocorón Prison." Provisional Measures regarding Venezuela*. Order of the Inter-American Court of Human Rights of November 1, 2010, Considering clause six.

<sup>9</sup> Cf. *Matter of El Rodeo I and El Rodeo II Judicial Confinement Center*, *supra* note 7, Considering clause eight; *Matter of Gladys Lanza Ochoa*, *supra* note 8, Considering clause seven; and, *Matter of the Araguan Correctional Facility "Tocorón Prison," supra* note 8, Considering clause six.

<sup>10</sup> 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 fourteen; *Case of 19 Tradesmen v. Colombia. Provisional Measures regarding Colombia*. Order of the Inter-American Court of Human Rights of August 26, 2010, Considering clause two; and, *Matter of the Araguan Correctional Facility "Tocorón Prison," supra* note 8, Considering clause eight.

<sup>11</sup> Cf. *Matter of the Monagas Judicial Confinement Center ("La Pica"), Yare I and Yare II Correctional Facilities (Yare Prison), Central-West Regional Correctional Facility (Uribana Prison), and El Rodeo I and El Rodeo II Judicial Confinement Center. Provisional Measures regarding Venezuela*. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering clause three; *Matter of Wong Ho Wing. Provisional Measures regarding Peru*. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering clause six; and, *Case of De La Cruz Flores v. Peru. Monitoring Compliance with Judgment and Provisional Measures*. Order of the Inter-American Court of Human Rights of September 1, 2010, Considering clause seventy-two.

7. When dealing with a request for provisional measures, the Court cannot consider the merits or any argument that is not strictly related to the elements of extreme gravity, urgency, and need to avoid irreparable harm to persons. Such extraneous issues may only be brought before the Court in traditional contentious case proceedings.<sup>12</sup>

**A) Regarding the request for provisional measures**

8. The Inter-American Commission indicated that since December 8, 2003, precautionary measures (MC 705-03) have been in effect in favor of CCJ members. Colombia has not properly implemented these measures as the beneficiaries continue to be the target of incidents of harassment, intimidation, and monitoring.

9. The Request for Provisional Measure of the Inter-American Commission is based on: a) alleged intelligence activities on the part of the DAS against the CCJ; b) alleged deficiencies of information, access, and participation of CCJ members in the investigations undertaken by the Prosecutor and the Office of the Inspector General against DAS agents; c) the alleged "accusations" and ongoing smear campaign against the CCJ and its members; and d) alleged threats and harassment against the lives and right to humane treatment of some of the CCJ members.

10. The Tribunal accordingly finds that the analysis of the facts and allegations of the Commission relating to points a), b), and c) of the preceding paragraph would be subject to examination in potential contentious case proceedings were such proceedings to be commenced. This Court has already stated that a ruling on the merits of the case may be achieved by way of a judgment in normal contentious case proceedings, and not through a request for provisional measures.<sup>13</sup> Furthermore, the Court finds that these allegations do not meet the requirements for the issuance of provisional measures pursuant to Article 63(2) of the Convention.

11. Consequently, in the analysis of the present request for provisional measures, the Court will not consider the above factual allegations due to the impossibility of entering into a discussion of matters more properly addressed during contentious case proceedings.

**B) Regarding the Alleged Incidents of Threats, Monitoring, Intimidation, and Others (Considering clause 9(d))**

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<sup>12</sup> Cf. *Matter of James et al. Provisional Measures regarding Trinidad and Tobago*. Order of the Inter-American Court of Human Rights of August 29, 1998. Considering clause six; *Matter of the Communities of Jiguamiandó and Curbaradó. Provisional Measures regarding Colombia*. Order of the Inter-American Court of Human Rights of August 30, 2010, Considering clause six; and, *Matter of Gladys Lanza Ochoa*, *supra* note 8, Considering clause seven.

<sup>13</sup> Cf. *Matter of James et al.*, *supra* note 12, Considering clause seven; *Matter of the Communities of Jiguamiandó and Curbaradó*, *supra* note 12, Considering clause seven; and, *Matter of Gladys Lanza Ochoa*, *supra* note 8, Considering clause seven.

12. The Inter-American Commission has argued in its request for provisional measures for the existence of threatening acts and harassment against the lives and right to humane treatment of CCJ members. In its request, it referred to this point generally, adducing that “the beneficiaries continue to be the target of harassment, intimidation, and monitoring.” Particularly, it indicated that Ana María Rodríguez and Lina Paola Malagón, members of the CCJ who had received death threats in March 2008 and March 2009, respectively, had seen no progress in the investigations launched into the events. Furthermore, the Commission remarked that in December 2008, other alleged acts of harassment against CCJ members on the part of State agents occurred in the city of Cartagena (*supra* Having Seen 2). In response, the State reported that an investigation into the alleged death threats and harassment of CCJ members during the month of December 2008 had been launched.

13. On February 1, 2010, pursuant to instructions from the Plenary, the Secretariat requested that the Commission (*supra* Having Seen 15) provide information on the threats and harassment that the CCJ members had received in the preceding six months, while specifying the location and date on which it occurred, and proof confirming occurrence of the same. The Tribunal observes that in its March 29, 2010 response to this request, the Commission reiterated the information presented in its request for provisional measures (*supra* Having Seen 2) and remarked that during 2009 and the first few months of 2010, CCJ members have continued to face a hostile climate on the part of State authorities and an increase in the persecutions and stigmatization for their work defending and safeguarding fundamental rights. In particular, the Commission noted that Lina Pola Malagón was put under surveillance and that other members of the CCJ, like Alejandra Vega Rodríguez, had been targets of illicit activities on the part of the DAS. In accordance with this information “and with the situation of general hostility that human rights defenders in Colombia face,” the Commission argues that CCJ members are experiencing a situation of imminent risk of irreparable harm.

14. The Court finds it relevant in this respect to remind the parties that the mechanism for provisional remedies requires showing that the conventional benchmarks of gravity, urgency, and irreparability of harm indicated in Article 63(2) of the Convention are met (*supra* Considering clause 5) with regard to persons for whom such measures are being sought. In this sense, the Court has already said that in accordance with the Convention and the Rules of Procedure, the burden of proving these *prima facie* elements rests with the petitioner<sup>14</sup> who, in this case, is the Inter-American Commission.

15. The Court notes that the Inter-American Commission has referred in general terms to facts according to which the members of the CCJ have allegedly been the target of threats, intimidation, and surveillance, among other acts. This is the case, for instance, with the alleged incidents of harassment on the part of State agents against the CCJ in Cartagena in December 2008, in that they have not specified who the harassed members are, nor when or how these events may have occurred.

16. Regarding the alleged death threats against Ana María Rodríguez and Lina Paola Malagón in March 2008 and March 2009, respectively, the Inter-American Commission indicated that these events formed the basis for its request for provisional measures. However, the Commission has not presented precise information showing that these

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<sup>14</sup> Cf. *Matter of Belfort Istúriz et al.*, *supra* note 6, Considering clause five; *Case of the Caracazo*, *supra* note 6, Considering clause eight; and, *Matter of Four Ngöbe Indigenous Communities and its Members. Provisional Measures regarding Panama*. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering clause eleven.

threats are ongoing, nor has it specified the measures that would be necessary to guard against them (*infra* Considering clause 20).

17. Concerning the events that have occurred over the last six months (*supra* Having Seen 17), the Commission reported that Ms. Lina Paola Malagón had been the target of surveillance in January 2010 by a “public transportation vehicle” and that other members of the CCJ, like Alejandra Vega Rodríguez, had been the target of illicit conduct on the part of DAS officials. However, it did so without providing further evidence regarding how these alleged events occurred, as such information would enable the Court to properly assess the situations in question (*supra* Considering clause 13).

18. On the other hand, as far as protective measures are concerned, the State claimed to have offered various security and protective measures to the CCJ members in order to safeguard their lives and right to humane treatment, within the framework of precautionary measures (*supra* Having Seen 7); nonetheless, the members rejected the measures proposed. In the present proceeding, the State has indicated its willingness to adopt specific measures to provide immediate and effective protection to the members of the CCJ.

19. In this regard, pursuant to the Court’s instruction (*supra* Having Seen 18), the Commission indicated that the protection must take into account the particular “circumstances, needs, and preferences of the beneficiaries,” and that CCJ members would not accept traditional personal security measures owing to their having been “used as an information-gathering tool for State intelligence services.” Consequently, the Commission, echoing the claims of the beneficiaries, addressed to the Court its request that the Court issue an order guaranteeing the cessation of the aforementioned illegal surveillance activities on the part of State agents, or adopting measures that ensure that intelligence services show respect for human rights and are subject to both civilian and judicial controls (*supra* Having Seen 20).

20. In consideration of the foregoing, the Court observes that in the face of these alleged incidents of threats, harassment, and intimidation, the CCJ members have not accepted the security and protective measures offered. These same services would be necessary in the event of a real threat demonstrating extreme seriousness, urgency, and the risk of irreparable harm. Thus, the measures would serve to protect and guarantee the rights to life and humane treatment that the Commission has duly noted are at issue in its request for provisional measures. The Tribunal notes that, when presented with the alleged incidents of threats, harassment, and intimidation, the type of measures the CCJ members have requested (*supra* Having Seen 20) are of a different character that do not properly correspond to the present procedure, in which the fundamental goal of the measures is the protection and efficacious preservation of an individual’s life and right to humane treatment.

21. Regarding the alleged harassment of the CCJ members from within the general environment of hostility in which human rights defenders live in Colombia, this Court finds, in accordance with the evidence presented, that these events do not *per se* meet the necessary requirements for a situation of “extreme gravity,” urgency, and likely irreparable harm.<sup>15</sup>

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<sup>15</sup> Cf. *Case of the Constitutional Court v. Peru. Provisional Measures regarding Peru*. Order of the Inter-American Court of Human Rights of March 14, 2001, Considering clause four; *Matter of Carlos Nieto Palma et*

22. Regarding the facts alleged by the Commission concerning the State's failure to advance in its investigations into the alleged death threats, the Court emphasizes that, pursuant to its jurisprudence, entering into an analysis of the effectiveness of the State's compliance with its obligation to investigate properly corresponds to an examination of the case on the merits.<sup>16</sup> The Court therefore rejects this claim.

23. In light of the foregoing, the Court finds that from the information presented by the Commission it can conclude that the requirements of Article 63(2) of the Convention and Rule 27 of the Rules of Procedure have not been met. Thus, the present request for provisional measures brought by the Inter-American Commission must be denied.

24. Notwithstanding this determination, the Court reminds the parties that States are under a constant and permanent duty to fulfill the general obligations that correspond to them under Article 1(1) of the Convention, respecting the rights and freedoms recognized therein and guaranteeing their free and full exercise to all persons under their jurisdiction.<sup>17</sup> In this regard, States have the particular obligation to protect those persons who work in non-governmental organizations, to provide effective and adequate guarantees to human rights defenders so that they may freely carry out their activities, and to avoid actions that limit or impede such work. Human rights advocacy constitutes a positive and complementary contribution to the State's own efforts as guarantor of the rights of all persons under its jurisdiction.<sup>18</sup> Accordingly, the prevalence of human rights in a democratic state depends largely on the respect and freedom afforded to these defenders in their work.<sup>19</sup>

25. The Court also reiterates its comments in other cases in the sense that when public authorities rule on matters of public concern, they become subject "to certain limitations in that they must state in a reasonable, though not necessarily exhaustive way, the facts on which they based their opinions and they should do so with an even greater diligence than that owed by individuals due to the prestige of their office, their reach, and the possible effects that expressing their opinions can have on certain segments of the population." In this regard the Court also noted that public officials

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*al. Provisional Measures regarding Venezuela.* Order of the Inter-American Court of Human Rights of January 26, 2009, Considering clause fifteen; and, *Matter of Liliana Ortega et al. Provisional Measures regarding Venezuela.* Order of the Inter-American Court of Human Rights of July, 9, 2010, Considering clause thirty-five.

<sup>16</sup> Cf. *Case of La Pica*, *supra* note 15, Considering clause twenty-three; *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 twenty-seven; and, *Matter of Wong Ho Wing*, *supra* note 12, Considering clause nine.

<sup>17</sup> Cf. *Case of Velásquez Rodríguez. Provisional Measures regarding Honduras.* Order of the Court of January 15, 1988, Considering clause three; *Case of Belfort Istúriz et al.*, *supra* note 6, Considering clause twenty-one; and, *Matter of Four Ngöbe Indigenous Communities and its Members*, *supra* note 14, Considering clause eighteen.

<sup>18</sup> Cf. *Case of La Pica*, *supra* note 15, Considering clause fourteen; *Case of the Caracazo*, *supra* note 6, Considering clause seven; and, *Matter of Gladys Lanza Ochoa*, *supra* note 8, Considering clause seventeen.

<sup>19</sup> Cf. *Case of Lysias Fleury. Provisional Measures regarding Haiti.* Order of the Inter-American Court of Human Rights of June 7, 2003, Considering clause five. See also Resolution 2412 (XXXVIII-O/08) of the General Assembly of the Organization of American States; and Resolution 1842 (XXXII-O/02) of the General Assembly of the Organization of American States.



"must take into account [their] position as guarantor[s] of the people's fundamental rights."<sup>20</sup>

**THEREFORE:**

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

By virtue of the power conferred upon it by Article 63(2) of the American Convention on Human Rights and Rule 27 of the Rules of Procedure of the Court,

**DECIDES:**

1. To reject the request for provisional measures filed by the Inter-American Commission on Human Rights for the members of the Colombian Commission of Jurists.
2. To order that the Secretariat of the Court serve notice of the present Order on the Inter-American Commission on Human Rights and the State of Colombia.

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<sup>20</sup> Cf. *Case of Apitz Barbera et al. ("Corte Primera de lo Contencioso Administrativo") v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of the Inter-American Court of Human Rights of August 5, 2008. Series C No. 182, para. 131; *Case of Rios et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of January 28, 2009. Series C No. 194, para. 139; and, *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of January 28, 2009. Series C No. 195, para. 151.

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