

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JUNE 7, 2011**

**PROVISIONAL MEASURES
WITH REGARD TO THE REPUBLIC OF COLOMBIA
MATTER OF THE KANKUAMO INDIGENOUS PEOPLE**

HAVING SEEN:

1. The orders issued by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of July 5, 2004, January 30, 2007, and April 3, 2009, in this matter. In this last order the Court required the Republic of Colombia (hereinafter "the State" or "Colombia"):

1. To maintain and adopt all necessary measures to continue protecting the life, and personal integrity and liberty of all of the members of the communities that form part of the Kankuamo Indigenous People[;]

2. To continue informing the Inter-American Court of Human Rights about the investigation into the facts that gave rise to these provisional measures[;]

3. To continue guaranteeing the security conditions necessary to ensure respect for the right to freedom of movement of the members of the Kankuamo Indigenous People, and so that those who have been forced to displace to other regions can return to their homes if they so wish[;]

4. To continue allowing the beneficiaries to participate in the planning and implementation of the protection measures and, in general, keep them informed of the progress of the measures ordered by the Inter-American Court[;]
[...]

2. The briefs of August 3, 2009, January 8 and 12 and October 6, 2010, and January 17, April 7 and May 2, 2011, whereby the Republic of Colombia (hereinafter "the State") submitted information on compliance with the provisional measures ordered in this matter.

3. The briefs of November 7, 2009, and April 28, 2010, in which the representatives of the beneficiaries of the provisional measures (hereinafter "the representatives") submitted their observations on the State's reports of August 3, 2009, and January 8 and 12, 2010 (*supra* second having seen paragraph).

4. The briefs of December 3, 2009, May 13, 2010, and April 13, 2011, in which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-

American Commission") submitted its observations on the State's reports (*supra* second having seen paragraph) and the representatives' briefs (*supra* third having seen paragraph).

CONSIDERING THAT:

1. Colombia has been a State Party to the American Convention on Human Rights (hereinafter the "American Convention") since July 31, 1973, and accepted the binding jurisdiction of the Court on June 21, 1985.

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

In 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. In this regard, the pertinent part of Article 27 of the Rules of Procedure of the Court¹ (hereinafter "the Rules of Procedure") establishes that:

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

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

4. According to Article 63(2) of the Convention, the provisional measures ordered by the Court are binding for the State, because a basic principle of the law on State responsibility, supported by international case law, has indicated that States must comply with their treaty-based obligations in good faith (*pacta sunt servanda*).²

5. Under international human rights law provisional measures are not only preventive, in that they preserve a juridical situation, but rather they are essentially protective, since they protect human rights, inasmuch as they seek to avoid irreparable harm to persons. Provided that the basic requirements of extreme gravity and urgency and the prevention of irreparable harm to persons are met, provisional measures become a real jurisdictional guarantee of a preventive nature.³

6. Based on its competence, within the framework of provisional measures, the Court may consider only and strictly those arguments that are directly related to the extreme

¹ Rules of Procedure of the Court approved at its eighty-fifth regular session held from November 16 to 28, 2009.

² Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998, sixth considering paragraph; *Matter of A.J. et al.* Provisional measures with regard to Haiti. Order of the Inter-American Court of Human Rights of February 22, 2011, third considering paragraph, and *Matter of Alvarado Reyes et al.* Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of May 15, 2011, fourth considering paragraph.

³ Cf. *Case of the "La Nación" Newspaper*. Provisional measures with regard to Costa Rica. Order of the Court of September 7, 2001, fourth considering paragraph; *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Inter-American Court of Human Rights of March 4, 2011, tenth considering paragraph, and *Matter of Alvarado Reyes et al*, *supra* note 2, fifth considering paragraph.

gravity, urgency and need to prevent irreparable damage to persons. Any other fact or argument can only be analyzed and decided during consideration of the merits of a contentious case.⁴

7. The representatives did not submit observations on the State's reports of October 6, 2010, and January 17, 2011 (*supra* third having seen paragraph). The last brief that the Court received from the representatives is dated April 28, 2010. Moreover, in their briefs, the representatives referred, among other matters, to facts that had already been analyzed in the Court's order of April 3, 2009 (*supra* first having seen paragraph). Consequently, this order will take into account the information that the Court has in the case file of this matter, together with the information on alleged facts that occurred after the order of April 3, 2009.

A. To maintain and adopt all necessary measures to continue protecting the life, and personal integrity and freedom of all the members of the communities that form part of the Kankuamo Indigenous People (first operative paragraph of the order of April 3, 2009).

8. The State indicated that this requirement is being implemented under the Human Rights Protection Program headed by the Ministry of the Interior and Justice, through its advisory body the Committee for Risk Assessment and Regulation (hereinafter "CRER"). These bodies recommend the most appropriate measures to protect an individual or a group of individuals, in this case the members of the Kankuamo Indigenous People. In its reports, the State has referred to the adoption of several physical measures of protection, both individual and collective, consisting basically of support for land transportation, as well as mobile communication systems ("avantel" and satellite), airplane tickets, and armored vehicles with escorts. According to the most recent information submitted by the State (*supra* second having seen paragraph), at a session held on February 22, 2011, CRER recommended "that the requests for physical measures of protection made by the indigenous peoples [...] be assessed taking into account the differentiated approach, in keeping with the proposal to be presented by the representatives of this population." Since physical measures of protection are temporary under Colombian laws, in February 2011, through CRER, the State asked "the representatives of the community to provide updated information regarding the leaders of the community, any new incidents that have occurred, and the corresponding court proceedings, in order to perform new and updated Technical Risk Assessments." However, the State indicated that the Human Rights Protection Program is awaiting this information. In addition, it advised that, in order to guarantee the life and personal integrity of the beneficiaries of the measures, the No. 10 Engineers Mobility and Counter-mobility Battalion had carried out tactical missions to guarantee security in the area, and that a permanent connection has been set up with the community, by which the members of the Kankuamo Indigenous People can establish contact and submit their requests and complaints. Based on information provided by the National Police, the State indicated that, in 2010 and 2011, "no new incidents occurred in relation to the Kankuamo ethnic group, and the different actions taken are defined by respect for human rights." Lastly, the State responded to specific facts indicated by the representatives (*infra* considering paragraphs 9 and 10).⁵

⁴ Cf. *Case of the Mendoza Prisons*. Provisional measures with regard to Argentina. Order of the Inter-American Court of Human Rights of March 30, 2006, tenth considering paragraph; *Case of the 19 Tradesmen v. Colombia*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of August 26, 2010, third considering paragraph, and *Case of Eloisa Barrios et al.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of February 21, 2011, fourth considering paragraph.

⁵ Regarding the supposed "pamphlet" that was delivered to the offices of the Kankuamo Indigenous Organization in December 2009, the State indicated that the National Police was unaware of it, and that although it

9. The representatives did not submit specific information on this operative paragraph. However, they did refer to four issues which can be placed under this heading: (a) threats to the life and personal integrity of several leaders; (b) violations of women's rights; (c) violations of international humanitarian law and other improper acts committed by the National Army, and (d) presence of other armed groups on Kankuamo territory. Regarding (a), they indicated that, in December 2009, a "pamphlet" from the paramilitary group the "Águilas Negras" was delivered to the offices of the Kankuamo Indigenous Organization, threatening several leaders. Those threatened included the lower councils of the Mojao community of Rancho de la Goya, and the Head of the Governing Council of the Kankuamo protected area, Jaime Arias. In addition, the representatives indicated that, on April 8, 2010, the members of the Kankuamo people, Oscar Segundo Carrillo Daza, director of the San Isidro Labrador School in the Atánquez indigenous protected area, was threatened in a text message. Regarding (b), they indicated that, owing to "the presence of members of the Colombian Army in the Sierra Nevada de Santa Marta [...] situations that directly affect the young women of the four peoples that reside there continue to occur"; they include "numerous pregnancies of indigenous women caused by members of the National Army, and their subsequent refusal to acknowledge their paternal obligations."

10. With regard to (c), the representatives indicated that, on July 7, 2009, the life and personal integrity of Celia del Carmen Maestre, a member of the Kankuamo people, was threatened by an active member of the No. 6 High Mountain Group attached to the Malambo Battalion, Department of the Atlantic. In addition, they indicated that events had been held in the area to issue military identity documents to the Kankuamo Indigenous People, as well as other civic-military activities, and that the Army continued to deploy within the Kankuamo Indigenous Reserve "without proper consultation." In addition, they indicated that they had been informed of cases of the recruitment of Kankuamo Indigenous People, such as that of the youth Edilberto de Jesús Gutiérrez and six other members of the Atánquez community. They advised that there were police posts and trenches in the middle of the town of Atánquez; a situation which put the population at risk should a guerrilla attack occur. Also, according to the representatives, the soldiers continue occupying places such as schools, homes and vehicles, and there are even military personnel and "military elements" near the health clinics. Similarly, they indicated that the indigenous peoples of the Sierra Nevada have denounced that military personnel have visited sacred places and, in some cases, have removed "tumas" and sacred elements on which the protection of the territory depends. Lastly, regarding (d), the representatives indicated that the Wiwa Yugamaín Bunuankurrua Tayrona Organization (OWBYT) had denounced that, on September 13, 2009, near the Valledupar *Casa Indígena*, which houses the offices of the indigenous organizations of the Sierra Nevada, the presence was observed of unknown individuals dressed in civilian clothing, with pistols and shotguns, riding two high-cylinder motorcycles. In addition, they indicated that the presence of unknown persons in the

had a report of an August 2009 communication signed by the illegal armed group known as the "Águilas Negras" [Black Eagles], this made no reference to the members of the Kankuamo Indigenous People. Regarding alleged threats to Oscar Segundo Carrillo Daza received in a text message on April 8, 2010, it indicated that the corresponding preliminary inquiry for the offense of proffering threats is being conducted by the 23rd Sectional Prosecutor of Valledupar. With regard to the alleged deployment of military vehicles within some of the protected areas of the Kankuamo Indigenous People and the house visits made by the Army, it indicated that the presence of the National Army is intended to provide the troops with "the security required by this type of deployment." In relation to the presence of soldiers in the Kankuamo Community, it advised that, when the Army is aware of the presence of strangers on Kankuamo territory, it orders the troop to conduct operations in order to ascertain the situation and ensure a peaceful environment. Regarding the alleged distribution of military identification documents to members of the Kankuamo Community, the State indicated that, it "had never obliged the Kankuamo to enlist in the Army." With regard to the alleged presence of strangers in the communities of Río Seco and Makugueka, who supposedly rode around on motorcycles dressed in black during the night, it advised that this situation occurred in 2008, when the situation was verified and the necessary security measures were taken.

community of Río Seco and the village of Makugueka was of concern to the Kankuamo Indigenous People, because they rode about on motorcycles, dressed in black “during the night,” and this has been the *modus operandi* of members of illegal armed groups such as “Self-Defense Patrols,” who have been accused of the murder of “around 150 members of the Kankuamo Indigenous People.”

11. The Commission took note of the information presented by the State and of its efforts to coordinate with the representatives. However, it indicated that, in light of the representatives’ observations, it did not have sufficient information regarding specific elements related to the “facts of December 2009 and April 2010,” or the “other risk factors that keep the people in a situation of extreme gravity and urgency” that has been recognized by the Colombian Constitutional Court. In its last brief (*supra* fourth having seen paragraph), it indicated that “it d[id] not have the representatives’ observations, and [was] waiting to receive them in order to issue more conclusive observations.”

B. To provide information about the investigation of the facts that gave rise to these provisional measures (second operative paragraph of the order of April 3, 2009)

12. In its initial reports, the State did not refer to this operative paragraph. However, in more recent briefs the State informed the Court about the investigations that are being conducted by the Human Rights and International Humanitarian Law Unit of the Prosecutor General’s Office and its Sectional Unit in Valledupar.

13. In the only briefs submitted by the representatives, they emphasized the lack of information from the State regarding the investigations carried out into the facts that gave rise to these provisional measures.

14. The Inter-American Commission initially indicated that the State had not submitted updated information on the investigations “into displacement, threats against the leaders [of the Kankuamo Indigenous People], the events that gave rise to the protection measures, and the masterminds of the events that had been occurring on Kankuamo territory.” In its most recent brief, the Commission indicated that it was “awaiting the representatives’ observations in order to formulate more conclusive observations on the investigations conducted by the State.”

C. To guarantee the security conditions necessary to ensure respect for the right to freedom of movement of the members of the Kankuamo Indigenous People, and so that those who have been forced to displace to other regions can return to their homes if they so wish (third operative paragraph of the order of April 3, 2009)

15. The State reported that the No. 10 Engineers Mobility and Counter-mobility Battalion had carried out several tactical missions in order to thwart the actions of any illegal armed group, thus guaranteeing the protection of the members of the Kankuamo Indigenous People. In addition, it indicated that under the policy of attention and support for the process of return of the displaced population, a “protocol to support the return or relocation processes of the displaced population” had been defined and designed. In this context, the State indicated that “the return of 50 families from the town of Río Seco and 35 families from Murillo had been made possible.” It also referred to the measures taken through the Departmental Committee to assist return in favor of the Kankuamo communities that returned to these municipalities. Furthermore, the State underscored that, on August 10,

2006, in order to comply with Protection Judgment 2595 of November 2, 2005, delivered by the Superior Council of the Judicature in favor of 17 families of the Kankuamo Indigenous People who, at that time, were in a situation of forced displacement in Bogota, it acquired the property known as "Turin" in the municipality of Nilo, Cundinamarca, which had been temporarily awarded to the beneficiaries of the Protection Judgment of October 3, 2007. In this regard, the State indicated that the Kankuamo leaders presented two productive projects that were rejected for technical and budgetary reasons, and that the State presented them with two proposals which they did not accept. In its most recent brief (*supra* second having seen paragraph), the State indicated that, based on the orders issued by the Constitutional Court, particularly "Judgment T-025 of 2004 and its follow-up Decision 004 of 2009, several entities of the national Government had been ordered, among other matters, to design a program to guarantee the rights of the indigenous peoples affected by displacement"; progress had been made in this regard, "particularly with the Kankuamo people in conjunction with the other indigenous peoples who live in the Sierra Nevada de Santa Marta, by autonomous decision of the communities." Based on "the order issued by the Constitutional Court, there is a specific mechanism, the Concertation Committee." It also indicated that the Ministry of Interior and Justice, through its Territorial Coordination Group on forced displacement, "has been taking different measures aimed at creating coordination mechanisms between the policies developed by the national entities and the actions of the territorial entities, seeking increased impact in the implementation of the policy for prevention of and attention to forced displacement."

16. Regarding the right to freedom of movement of the members of the Community, the representatives reported that, on July 15, 2009, in the community of Guatapurí, Luis Manuel Montero Arias and José Enrique Cáceres Arias were arbitrarily detained by members of the State's security agency (DAS). In addition, they emphasized that the members of the indigenous peoples who decided to return voluntarily to their territories did not have the necessary guarantees of security, protection and dignity when doing so. They expressed their concern owing to the current absence of mechanisms to prevent new forced displacements, and stressed that the failure to implement and make available productive projects in keeping with the indigenous traditions and customs that guarantee collective self-sustainability in the context of the return is a pending task for the State. They indicated that an example of this is the abandonment of the return to the community of Río Seco. Lastly, the representatives advised that, in an application for protective measures, they had requested the guarantee of the rights of the indigenous people who are in a situation of forced displacement in Bogota, and the award of a property in the municipality of Nilo, department of Cundinamarca. They reiterated the importance of assessing any changes in the proposals taking into consideration the practices and customs of the beneficiaries.

17. The Commission observed that the State and the representatives both refer to the temporary award of a property to the members of the Kankuamo Indigenous People who are displaced in Bogotá, as well as to the lack of agreement regarding the development of a production project on this property. Moreover, it underlined the contradictions that existed regarding application of the Protocol to support the processes of return or relocation of the displaced population. It observed that the information presented by the State with regard to the measures taken for the return of the Kankuamo population to the municipalities of Río Seco and Murillo was incomplete. In its most recent brief (*supra* fourth having seen paragraph), it reiterated "the need for detailed information on the measures taken to implement the security conditions needed for the free movement of the People, in order to improve their situation and enable them to return under secure conditions, avoiding new displacements."

D. To allow the beneficiaries to participate in the planning and implementation of the protection measures and, in general, keep them informed on the progress of the measures ordered by the Court (fourth operative paragraph of the order of April 3, 2009).

18. The State reported that it had convened the different entities that are part of the working group on the provisional measures to a monitoring and coordination meeting, to be held on May 19, 2009. However, the head of the Governing Council had expressed the concern of the Kankuamo Indigenous People owing to the absence of the Mayor of Valledupar and the Governor of Cesar; consequently, since no government officials with decision-making powers were present, he asked that a new date be set for the meeting. The State indicated that it had reiterated its willingness to monitor compliance with the provisional measures and requested the head of the Council to appreciate the fact that delegates of the different entities were in attendance; however, he maintained his position. The State also reported that, since June 2010, communications has been established with the representatives of the beneficiaries in order to agree on a date for a monitoring and coordination meeting on the provisional measures. However, due to the previous commitments of the beneficiaries, their representatives, and the officials of the different State entities, it was not possible to establish a date by mutual agreement. According to the most recent information, the State tried to organize the meeting on December 21, 2010. However, "for reasons beyond the State's control" it was not possible to hold this meeting. The State indicated that it was taking the necessary steps to hold the meeting in February 2011.

17. The representatives indicated that all authorities of the Kankuamo Indigenous People and the representatives attended the meeting on May 19, 2009. However, they underscored the absence of any authorities with decision-making powers, such as the Mayor of Valledupar, the Governor of the department of Cesar, and the Director of the Presidential Human Rights Program of the Vice-Presidency of the Republic. They expressed their concern about the attitude assumed by the Human Rights Director of the Ministry of Foreign Affairs, "who indicated that the Ministry would be unable to convene a new meeting of the working group to follow up on the provisional measures of the Kankuamo People, claiming agenda difficulties." They also expressed their concern because it appears that the State entities will not fulfill the commitments made before the Concertation Committee. Consequently, they indicated that the Kankuamo Indigenous People had convened the State again in order to comply with the indicated agenda. However, they indicated that they had not received a response from any authority.

18. The Commission observed that it has no information on the possible reactivation of the concertation committee. It also indicated that it considered that "fluid communications between the parties were essential to improve implementation of the measures that are proving effective to guarantee the rights of the Kankuamo Indigenous People, as well as the implementation of the commitments previously made by the State authorities."

E. Public hearing

19. The President observes that the State has referred to various measures taken to date in relation to these provisional measures. Furthermore, the President has verified that the last information that the Court received from the representatives is dated April 28, 2010. In addition, although these provisional measures correspond to a request made by the Inter-American Commission (*supra* first having seen paragraph, order of July 5, 2004), the latter has not referred to precise, specific and current facts related to the measures.

20. Based on the foregoing, the President finds it necessary for the Court to hold a public hearing to obtain specific updated information from the State and, above all, from the Inter-American Commission and the representatives, on the status of the implementation of these provisional measures, in accordance with the first to fourth operative paragraphs of the Court's order of April 3, 2009 (*supra* first having seen paragraph), so as to assess whether to maintain these measures.

THEREFORE:

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

in exercise of the authority conferred on him by Article 63(2) of the American Convention on Human Rights, and Articles 4, 15(1), 27(2), 27(9) and 31(2) of the Court's Rules of Procedure,

DECIDES:

1. To convene the Inter-American Commission on Human Rights, the representatives of the beneficiaries of these provisional measures, and the Republic of Colombia to a public hearing to be held at the seat of the Inter-American Court of Human Rights on June 27, 2011, from 5.15 p.m. to 7 p.m. for the Court to receive information and observations regarding the implementation of these provisional measures, in accordance with considering paragraphs 8 to 18 of this order.

2. To require the Secretariat of the Court to notify this order to the Inter-American Commission on Human Rights, the representatives of the beneficiaries of the provisional measures, and the Republic of Colombia.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary