

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 25, 2011**

**REQUEST FOR BROADENING OF
PROVISIONAL MEASURES REGARDING COLOMBIA**

MATTER OF THE COMMUNITIES OF JIGUAMIANDÓ AND CURVARADÓ

HAVING SEEN:

1. The Orders of the Inter-American Court of March 6, 2003, November 17, 2004, March 15, 2005, February 7, 2006, February 5, 2008, November 17, 2009, and August 30, 2010. In this last order the Court ruled:

1. To reiterate to the State of Colombia that it must adopt, without delay, the measures [which are] necessary to protect the life and personal integrity of all of the members of the Community Council of Jiguamiandó and the families of the Cur[v]aradó, beneficiaries of the instant measures[.]
2. To reiterate to the State of Colombia that it must establish a mechanism of continuous supervision and of permanent communication in the so-called "humanitarian refuge zones"[.]
3. To reiterate to the State of Colombia that it must give participation to the representatives, designated by the beneficiaries of these measures, in the planning and implementation of the measures and that, in general, the State shall keep them informed of the progress of the measures ordered by the Inter-American Court of Human Rights[.]
4. To deny the representatives' request for expansion of the provisional measures[.]

[...]

2. The communication of April 16, 2011, whereby the Inter-American Commission informed the Court of "circumstances that put the members of the Jiguamiandó and Curvaradó communities at extremely grave and urgent risk;" the communication of April 29, 2011, whereby the Commission submitted a request to broaden these provisional measures; the communication of May 11, 2011, whereby the Inter-American Commission submitted additional information regarding the provisional measures and their request for expansion; and the communication of November 23, 2011, whereby the Inter-American Commission submitted its comments on the representatives' brief dated November 17, 2011 (*infra* Having Seen 3).¹

3. The brief of May 9, 2011, whereby the representatives of the beneficiaries of the measures (hereinafter "the representatives") addressed the request for provisional measures submitted by the Inter-American Commission, and the briefs of August 29 and 30; October 10 and 20, and November 11, 2011, in which they submitted alleged new facts supporting the request.

4. The brief of May 25, 2011, whereby the State presented its comments on the Inter-American Commission on Human Rights' request (*infra* Having Seen 4); and the brief dated November 23, 2011, whereby the Commission submitted written comments to the representatives' brief dated November 17, 2011 (*supra* Having Seen 3). The State did not submit

¹ The communication dated November 16, 2011, in which the Inter-American Commission on Human Rights submitted comments on the representatives' briefs dated August 29 and 30 and October 10 and 20, 2011, was not taken into consideration by the Tribunal because - among other reasons - it was submitted after the non-extendable deadline of November 1, 2011, set by the President of the Court.

comments on the representatives' briefs dated August 29 and 30 and October 10 and 20, 2011 (*supra* Having Seen 3).

5. The public hearing held by the Court at its seat in San José, Costa Rica, on June 27, 2011.²

CONSIDERING THAT:

1. Colombia has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention") since July 13, 1973, and that it recognized the obligatory jurisdiction of the Court on June 21, 1985.

2. Article 63(2) of the American Convention establishes that "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission."

3. In this regard, Article 27 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure")³ establishes in its pertinent part 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. In International Human Rights Law, provisional measures are not only precautionary in nature, in the sense that they preserve a legal situation, but also fundamentally protective, because they protect human rights inasmuch as they seek to avoid irreparable damage to persons. Provisional measures are to remain effective as long as the basic requirements of

² The following persons appeared at this hearing: a) for the Inter-American Commission: Karla Quintana Osuna and Silvia Serrano Guzmán, Advisors; b) for the representatives of the beneficiaries: Santander José Nisperuza Álvarez, Abilio Peña, Danilo Rueda and Andrea Liliana Ávila, and c) for the State of Colombia: Hernando Herrera Vergara, Ambassador of Colombia in Costa Rica; Hernán Ulloa Venegas, Director of the Presidential Program on Human Rights; Juan Carlos Forero, Deputy Attorney General of the Republic; Néstor Armando Novoa, National Director of the Public Prosecutor's Offices of the Attorney General's Office; Marlene Barbosa Sedano, Human Rights Coordinator for the Attorney General's Office; Francisco Javier Echeverri Lara, Director of Human Rights of the Ministry of Foreign Affairs; María Paulina Riveros Dueñas, Director of Human Rights of the Ministry of the Interior and Justice; Pedro Santiago Posada Arango, Director of Indigenous Community Affairs of the Ministry of the Interior and Justice; Elena Ambrosi Turbay, Director of Human Rights of the Ministry of National Defense; Lieutenant Colonel John Henry Arango Alzáte, Coordinator of the Human Rights Group of the National Police; Tomás Concha, Coordinator of the Presidential Human Rights Program; Diana Patricia Ávila Rubiano, Coordinator of the Working Group on Issues of Protection and Information on Human Rights of the Ministry of Foreign Affairs; Luz Stella Bejarano, Coordinator of Defense before International Courts of the Ministry of National Defense; César Augusto Vergara, Coordinator of the Human Rights Group of the Presidential Agency for Social Action and International Cooperation; Juan Manuel Bravo Coral, Leader of the Public Policy Formulation on Human Rights of the Ministry of the Interior and Justice; Diana Izquierdo, Advisor the Department of Human Rights of the Ministry of the Interior and Justice; Alejandra Poveda Torres, Advisor with the Department of Human Rights of the Ministry of the Interior and Justice, and María Paula Ordóñez and Jennifer Mojica, Advisors with the Ministry of Agriculture and Rural Development.

³ Rules of Procedure of the Court approved in its LXXXV Regular Period of Sessions, held on November 16-28, 2009.

extreme gravity and urgency and the need to prevent irreparable damage to persons are met. Provisional measures thus become a true legal guarantee of a preventative nature.⁴

5. Based on its jurisdiction and in the context of this request for expansion and update of the beneficiaries of the provisional measures, the Court shall solely and strictly consider the arguments directly related to extreme gravity, urgency, and need to prevent irreparable damage to persons. Any other fact or argument can only be analyzed and resolved during the consideration of the merits of a contentious case.⁵

6. In the Order of August 30, 2010 (*supra* Having Seen 1), the Court clarified that in processing these provisional measures, it cannot rule on “aspects related to the processing of judicial and administrative actions regarding the restitution of lands and their outcomes, the census, election of leaders, or the alleged illegal crops and cattle raising on lands that apparently belong to the beneficiaries,” or on “the judicial and disciplinary investigations carried out by State into the alleged acts of harassment, threats, detentions and murders committed against the beneficiaries,” given that all of these issues should be analyzed in a corresponding contentious case. In that Order, the Court also indicated that it would not address facts that do not refer to the beneficiaries of the provisional measures, that is, the members of the Jiguamiandó and Curbaradó Communities. The Court will take all this into account when ruling on the request for expansion of these provisional measures presented by the Inter-American Commission.

A. Request for expansion of the instant provisional measures.

7. As background to the request for expansion, the Commission mentioned that last year the representatives filed “a request for recognition as beneficiaries of the measures the members of the humanitarian zones of Caracolí and Caño Manso” before the Court. This was considered by the Court as a request for “expansion of provisional measures, which should have been formally requested by the Inter-American Commission.” It indicated that in response to the Court’s decision (*supra* Having Seen 1), the representatives submitted a request to the Commission for provisional measures benefiting certain humanitarian and biodiversity zones “based on the same risk factors as the provisional measures.” In response, it requested information from the State as well as from the petitioners. Subsequently, the representatives asked the Commission to submit a request for the broadening of the instant provisional measures to the Court.⁶

8. In its request for expansion of the provisional measures, the Commission asked the Tribunal to:

[...]

b) “Broaden the provisional measures to the new families located in the areas benefiting from the provisional measures, including adding the new members and family units that form part of the families benefiting from the provisional measures;

⁴ Cf. *Case of “La Nación” Newspaper*. Provisional Measures regarding Costa Rica. Order of the Court of September 7, 2001, Considering 4; *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Inter-American Court of Human Rights of March 4, 2011, Considering 10, and *Matter of Alvarado Reyes et al.*, Considering 5.

⁵ Cf. *Case of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 20, 1998, Considering 6, and *Matter of the Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of April 25, 2011, Considering 4.

⁶ The Commission stated that among other things, this request was based on the “alleged withdrawal of the army from the area for more than eight days, on the continuing presence of dozens of paramilitary troops, and on the military’s sporadic and limited return to the area, added to risk factors shared by the humanitarian zones benefiting from the provisional measures.” The request was also based on the increase in the number of families benefiting from the instant provisional measures.

c) Orde[r] the State to protect the Camelias-El Tesoro Humanitarian Zone, and all of the families that it comprises;

d) Expand[d] the provisional measures to protect the life and humane treatment of the members of the Caracolí, Caño Manso and Argenito Díaz-Llano Rico Humanitarian Areas, as well as of the following Biodiversity Areas: "No hay como Dios" (Caño Manso); "Los Caracoles" (Caracolí); "Orlando Valencia" (Caracolí); "El Martirio" (Llano Rico-Caño Claro) and "Lejano Oriente (Llano Rico-Caño Claro)."

9. In addition to this, the Commission asked the Court to:

a) "[i]mplement special protective measures based on the geographic location of said Humanitarian and Biodiversity Areas, considering the collective nature of the measures that makes necessary the protection of a group of persons that are located in areas where geographically the same levels of risk exist;

b) [i]mplement additional measures for those persons who due to exposure to a high level of risk and extraordinary threats require concrete and specific measures for their protection. In this regard, it asks the State to implement or improve, as applicable, specific measures with regards to Ligia María Chaverra, Enrique Petro, Manuel Denis Blandón, Uriel Tuberquia, Erasmo Sierra, Eustaquí Polo, Ladis Tuirán, Nohemí de Saya, Alfonso Saya, Santander Nisperuza, Liria Rosa García, Raúl Salas and Miguel Hoyos;

c) [e]stablish a mechanism for continuous supervision and permanent communication in the aforementioned Humanitarian and Biodiversity Areas to provide protection for the families located in these areas, and also to allow for the providing of updated information on the situation of its members, paying attention to the dynamic nature of and constant change in social and family relations.

[...]."

10. As far as general justification of the request for expansion, and to provide some background, the Inter-American Commission indicated that based on the orders issued by the Court in the instant matter in 2003, 2004, 2005 and 2006 (*supra* Having Seen 1), "the Court has knowledge of the continuous and grave acts of threats, harassment, stigmatization, arbitrary detentions, forced disappearances, murders and murder attempts, torture and cruel treatment against the members of the Communities of Jiguamiandó and Curvaradó." The Commission also pointed out that "the Court has found that the beneficiaries have been subjected to constant intimidation 'at the hands of armed civilian groups and businessmen growing African palm' who have illegal plantations on collective territories. The Court has also found that these groups' control of the region is growing, obligating the inhabitants of those communities to live in a 'special situation of displacement.'" The Commission likewise mentioned that the Court "is also aware of campaigns to discredit the beneficiary families and of the opening of judicial investigations and attempts to prosecute some of the beneficiaries of the measures, allegedly as mechanism of intimidation in relation for the actions taken to claim the lands [...]." Finally, the Commission indicated that it had received information regarding "grave threats against well-known leaders of these communities in the form of alleged plans to stage attempts on their lives." It stated that, as already reported to the Court, "all of these situations that put at risk the lives and personal integrity of the beneficiaries have been met with 'State tolerance and indifference.'"

11. As recent information, the Commission indicated that "the situation of extreme gravity and urgency of these members of the humanitarian and biodiversity zones has intensified with the events of April 2011, when following an alleged combat event that lasted several minutes in an area outside of the humanitarian zones, Brigade 17 completely withdrew from the Jiguamiandó and Curvaradó area for approximately eight days, leaving the groups completely unprotected and at the mercy of alleged paramilitary groups." It also pointed out that it had been informed that "at the same time that the Army left, dozens of alleged paramilitary members, dressed as civilians and bearing rifles occupied some of the collective land areas and told the inhabitants that it was not necessary to report their presence, since the authorities were already aware of it."

Additionally, the Commission mentioned in its request that it had learned that “in recent days, a small group of soldiers from Brigade 17 had returned to the area without returning to provide direct perimeter control of the humanitarian zones, that some soldiers had indicated that it would be impossible for new troops to arrive, and that added to this, a group of approximately forty paramilitary members were permanently located behind the Camelias-El Tesoro humanitarian zone and in the Caño Claro-Andalucía humanitarian zone.” In this regard, it indicated that while the State has reported on “certain efforts intended to partially fulfill the obligations of protection established by the Court, [...] the facts on the ground [...] have demonstrated and continue to demonstrate the inefficacy of the implementation of these measures, and demonstrate the need to protect more persons in the same zone on the grounds that they face the same risk factors.”

12. Additionally, the Commission indicated that it had learned that “grave threats and instances of harassment have taken place against members of various humanitarian and biodiversity zones, some of which are not beneficiaries of provisional measures.” Moreover, it mentioned that “the families that comprise the Humanitarian Zone of Caño Manso have been subject to numerous threats from alleged paramilitary members who are well-known in the region, as well as from the employees of businessmen in the area.” In this regard, “according to the information available, several inhabitants of the smaller Caño Manso councils had their lives directly threatened. This was the case with Santander Nisperuza, with interrogations by alleged paramilitary members of three farmers in the area - Miguel Mercado, Mario Mercado and Luis Solipaz – and with death threats faced by farmer Jesus David, who was threatened at gunpoint by alleged paramilitary members.” The Commission mentioned that “additionally, these residents of Caño Manso had suffered violations to their community spaces and grave infringements to their right to food.” It indicated that the members of the humanitarian zones of Caracolí and Argenito Díaz “have been victims of violations of their community spaces as the result of numerous attempts to make them vacate and through attacks by bad-faith occupants that destroyed their crops.” It noted that “some leaders of these communities also received grave threats.” In this regard, the Commission mentioned the death of Mr. Argenito Diaz, which took place on January 13, 2010. Regarding the Camelias-El Tesoro humanitarian zone, the Commission pointed out that it had been “informed of the continual harassment to which the members of the community had been subjected by bad-faith occupants that had taken the lands of the smaller council of Camelias, and particularly, the grave violation of the biodiversity zone of the Tuberquia family, current beneficiary of the provisional measures.” The Commission “emphasiz[ed] that currently, dozens of alleged paramilitary groups remain in the areas surrounding the Camelias-El Tesoro Humanitarian Zone.”

13. The Commission pointed out that its request “was based on the aforementioned serious and current grave facts and recent events, in addition to the risk factors on which the original request was based and that affect a significant number of families. Those families have formed humanitarian and biodiversity zones, which are fully identifiable spaces, as a mechanism for protecting their rights to life, humane treatment and community integrity.”

14. In more precise terms, the Inter-American Commission singled out five different situations in support of its request, namely:

a) the “[i]ncreased number of families within those benefiting from the provisional measures as a result of new unions.” Regarding this, the Commission argued that “the existence of new members and families within the families that are already beneficiaries of provisional measures is the result of the socio-cultural and family dynamics of these human groups [...]. [I]t is evident that for them, risk factors have been identified that result from their close connections with the situation of extreme gravity and urgency that justifies their recognition as beneficiaries.” Therefore, it requested that the number of

families located inside the biodiversity and humanitarian zones already protected be updated, and that it be increased from 161 to 214 families;

b) the “[a]rrival of new families not related to the beneficiaries of the humanitarian and biodiversity zones protected by the provisional measures.” It indicated that “[t]wo families recently arrived to the Humanitarian Zone of Pueblo Nuevo, three families to the Humanitarian Zone of Nueva Esperanza[,] three families to the Humanitarian Zone of El Tesoro, and 10 families to the Humanitarian Zone of Andalucía-Caño Claro.” The Commission highlighted that these new families are located in “the same zones that are protected by provisional measures, and the level of risk they face is identical to that of the beneficiary families [...]”;

c) the “movement of families that are beneficiaries of the provisional measures to new humanitarian and biodiversity zones.” The Commission claimed that “15 beneficiary families [...] that were initially in the Humanitarian Zone of Tesoro and other beneficiary families that live in the zone of Andalucía-Caño Claro, moved and created the new Humanitarian Zone of Camelias-El Tesoro.” Currently, “out of the beneficiary families that initially created the Camelias-El Tesoro Humanitarian Zone, 26 new family groups have been created.” The representatives asked the Commission to request an expansion of the provisional measures to the 15 new families that are not beneficiaries but that are now living in the Camelias-El Tesoro Humanitarian Zone. The Commission argued that “this would be an update of the [f]amilies that are beneficiaries of the provisional measures [who] created a new zone, with new family groups (26 in total) subsequently created among them;”

d) the existence of “the humanitarian and biodiversity zones that are not beneficiaries of the provisional measures.” Regarding this, the Commission reiterated its concern at the fact that the events of April 2011 affected not only the zones protected by provisional measures but also the humanitarian zones at Caño Manso, Argenito Díaz and Caracolí, as well as the following biodiversity zones: “No hay como Dios,” “Los Caracoles,” “Orlando Valencia,” “El Martirio,” and “Lejano Oriente;” and

e) the “[p]lan for the mass murder of male and female leaders.” The Commission asked the Court to order the State to implement “special protection plans” for the following persons: Ligia María Chaverra, Uriel Tuberquia, Enrique Petro, Manuel Denis Blandón, Erasmo Sierra, Eustaqui Polo, Ladis Tuirán, Nohemi de Saya, Alfonso Saya, Santander Nisperuza, Liria Rosa García, Raúl Salas and Miguel Hoyos.

15. Regarding the humanitarian and biodiversity zones for which the expansion of these provisional measures is being requested, the Commission provided the Tribunal with interactive maps that show the location of these areas and the movements of the members of the communities of Jiguamiandó and Curvaradó within their territory. During the public hearing held in this matter (*supra* Having Seen 5), the Inter-American Commission reiterated its request for expansion of the provisional measures.

B. Comments of the representatives on the request filed by the Inter-American Commission.

16. The representatives asked the Court to “[s]tudy the request submitted by the [Inter-American Commission] to recognize as beneficiaries of the provisional measures the family units of the smaller councils that have returned after 2007 and currently live in the humanitarian and

biodiversity zones in Pueblo Nuevo, Nueva Esperanza in Jiguamiandó and Humanitarian Zones in el Tesoro, Camelias El Tesoro, Andalucía Caño Claro in Curvaradó," and to "recognize as beneficiaries [...] the families of the smaller councils that reside in the humanitarian and biodiversity zones in Caño Manso Caracolí, Argentino Díaz, which share the same risk factors as the beneficiaries [...]."

17. During the public hearing (*supra* Having Seen 5) the representatives reiterated their observations on the alleged gravity and risk faced in the territory of the Curvaradó and Jiguamiandó river basins. Also, they added that the risk factors persist, and that, among other events, 12 days prior to the public hearing, approximately 300 paramilitary members entered the region between Bella Flor Remacho and Santa Fe de Churima, although they also stated that there were 200. Likewise, during the hearing, the representatives also submitted "19 records in which they alleged in detail the times, methods and locations of the incidents involving risk that have affected the communities since the last hearing on monitoring of the instant measures [...]." Subsequently, the representatives informed the Court of new alleged events that occurred in the communities of Curvaradó and Jiguamiandó. They argued that based on this, the request for expansion of the provisional measures of the Inter-American Commission is appropriate.⁷

C. State comments on the request filed by the Inter-American Commission.

18. The State observed that the requirements for the broadening of the provisional measures – those of extreme gravity and urgency and the risk of irreparable damage – were not met. It therefore argued that the Commission's request should be dismissed. In this regard, the State addressed alleged risk factors mentioned by the Commission, as well as the facts and claims that support the request for broadening. First of all, it reiterated that the Army has not withdrawn from the area, and that "the movement of military troops in that area is due to strategy of the National Army toward carrying out its missions and operations. This under no circumstances means that there has been a withdrawal of personnel, much less that the Armed Forces has abandoned the community." During the public hearing, it also stated that for the State, "the process taking place in the zone of Jiguamiandó and Curvaradó is a priority, [and therefore] the Ministry of Defense [was] studying the possibility of increasing both police and military presence in the area, not only to guarantee the census process that they have been supporting, [...but also] to guarantee the non-repetition [of the incidents]." It mentioned they are also planning on increasing the presence of "judicial authorities to be able to move forward in the prosecution of the members of the criminal bands operating in the area." Regarding the estimate of the number of paramilitary troops that allegedly entered the territory of the Jiguamiandó and Curvaradó communities (*supra* Considering 10), the State indicated during the public hearing that the hearing itself included many references to generalities. It asked the representatives to submit copies to the State of the allegations arising from the alleged incidents, and that those documents indicate which human rights violations had taken place as a result of the incursions and how

⁷ Basically, the representatives made reference to incidents alleged to have occurred after the public hearing was held (*supra* Having Seen 5) to the detriment of residents of the Curvaradó and Jiguamiandó communities. The representatives told of the alleged murders of two unidentified young people whose bodies were found in the Jiguamiandó river basin. They also mentioned the forced disappearances of Ever González and Francisco Pineda - individuals who are not currently beneficiaries of provisional measures - and the murder of indigenous man Jhon Jairo Domicó on Curvaradó collective territory. They reiterated that the paramilitary groups located in the area continue to attack with the acquiescence of members of Brigade 17. They likewise indicated that since the Inter-American Commission submitted its request for the broadening of provisional measures, the "presence of paramilitary troops that continue to act with the acquiescence of Army and Police authorities" has continued. They noted that the "biodiversity areas and farmland of the members of the humanitarian zones have been affected" and that "leaders in the development of the [land] restitution process," have been threatened, while the "implementation of the cultivation of illicit crops continues."

many people died or suffered damages to their physical integrity. This, in order that the allegations could be brought before the competent authorities.

19. Also, in light of the alleged collusion of members of the Army with the “actions of illegal actors,” the State indicated that it was necessary to exhaust the legal remedies available in the domestic legal system for protecting the rights of the beneficiaries from any potential infringement. This includes “any event that presents any irregularity in the actions of the members of the Armed Forces, as a mechanism exists for filing of complaints with the Armed Forces [...]” In this regard, it expressed the need for the pertinent claims to be made in a timely fashion, since “clearly if the State is not aware of this information, it cannot act and will therefore end up [...] not fulfilling its responsibility.” It indicated that there is “a broad range of effective and suitable remedies that provide access to State agencies and responses therefrom.” This situation applies, for example, to the representatives’ statements regarding the operations and alleged presence of paramilitary groups and criminal actions they have taken “with the protection of the Police Force.” The State’s opinion is that these allegations are “sensitive and should be made with sufficient evidence. Of course, they should also be filed with the corresponding authorities.”

20. Regarding the alleged presence of paramilitary members in the zone “under the protection of Law Enforcement,” the State indicated that it is committed to “eradicating all groups that are acting illegally and conducting acts of violence,” and to this end they have taken legislative and other actions to achieve peace in Colombia, including actions on the part of the National Police and the Army in the Bajo Atrato region. In this regard, the State referred to various measures implemented in terms of security in the area, including individual protection measures. It also indicated that the representatives constantly submit documents called “historic records, which contain narrations of alleged events similar to the document that supports the instant request.” These documents are processed by the State through the corresponding institutions, and their results are reported to the representatives. In this regard, it indicated that from January to April 2011, the Presidential Program of Human Rights has processed over 50 requests. The State reiterated that it is implementing various pecuniary measures of protection for persons that are beneficiaries as well as those that are not, including those included in the request for expansion of measures, which is being carried out as part of its obligations. It also stated that “it wants to reiterate to the [Court] and thereby to the Inter-American Commission and to [the representatives], that [...] if any individual element of protection is required, they can access the available institutional options legally established for such purposes.”

21. Regarding the alleged abuse by businessmen and the “bad faith” occupations, the State pointed to the various investigations being undertaken by the Public Prosecutor’s Office regarding crimes of threats, usurpation of land and criminal conspiracy, as well as the National Unit on Human Rights and International Human Rights Law. It thus reiterated the need for exhaustion of the domestic procedures established under Colombian law for the State to proceed accordingly. On the other hand, with regard to the alleged “prosecution” of inhabitants of the communities of Jiguamiandó and Curvaradó, among others, the State indicated that its duty is to investigate illegal acts committed under its jurisdiction, and that “it cannot be assumed or intended that precautionary or provisional measures grant judicial or legal immunity to their beneficiaries.” The State also indicated that pursuant to the authorities given to it by “the Constitution and the Law,” the National Police can also “perform inspection operations in order to maintain public order and security” and while respecting the fundamental rights of persons.

22. Regarding these “alleged national and international campaigns to discredit the inhabitants of the area”, the State reiterated that it is important to exhaust “the legal remedies available

before the competent authorities to citizens whose rights may be affected by such conduct in order to be able to investigate these claims.”

23. Finally, the State indicated that “it has demonstrated that it has implemented all of the actions available to it to comply with the general obligation to guarantee the rights of the population that lives in the Jiguamiandó and Curvaradó” basins, especially with regard to the right to life and humane treatment “of this population group.” Based on the above, it claimed that “the obligation to guarantee implies that the State, in the exercise of its sovereign domestic authority[,] put all its institutions to work protecting the rights of persons[. Hence it is] possible to conclude that when it does so, the principles of subsidiarity and complementarity on which the Inter-American System for Protection is based are not applicable.” The request for expansion presented by the Commission to the Court “must be considered in the framework of” this principle. In this regard, it reiterated that actions have been taken to date to protect not only the beneficiaries of these provisional measures but all members of the Jiguamiandó and Curvaradó communities, which cover a territory of over 100,000 hectares. It stated that the government is developing a Strategic Plan for Prevention, Protection, and Attention to the Communities in the Jiguamiandó and Curvaradó Basins and drafting a bill titled the Victims’ Act that includes a chapter on land restitution, and a Model for Security, Prevention, and Protection of Persons, Groups of Persons, and Communities. In addition, it indicated that “currently 178 persons listed as potential beneficiaries of the [...] request for [expansion of provisional measures] are included in and enjoying the benefits of the actions taken within the framework of the Plan for Return of the Communities of the Jiguamiandó and Curvaradó River Basins.” Based on this, it concluded that it is not necessary for the Court to make use of an extraordinary and subsidiary protection mechanism by expanding the provisional measures that are in effect, and that there is no legal or factual basis for doing so. In the event of new requests for protection, they can be “processed according to the [internal] guidelines established for that purpose, as has been done repeatedly.” During the public hearing (*supra* Having Seen 5), the State reiterated that the expansion of the instant provisional measures would only be admissible if extreme gravity and urgency and imminent risk were demonstrated, in conformity with Article 63(2) of the American Convention and Article 27 of the Court’s Rules of Procedure. Consequently, it argued that the Commission’s request should be dismissed.

D. Considerations of the Court.

24. The Court observes that the Inter-American Commission requested the expansion of provisional measures for the humanitarian and biodiversity zones of the Jiguamiandó and Curvaradó Communities, which are in different situations, as well as for the alleged specific leaders of those communities. For all of these different circumstances, firstly, the Commission cites as background events that appear in Orders issued by the Court eight, seven, six, and five years ago (*supra* Considering 10). The current information presented by the Commission to support the request has to do with the alleged fact that in “April 2011,” the National Army allegedly “fully” withdrew Brigade 17 “from the Jiguamiandó and Curvaradó area” for approximately eight days, leaving them “fully unprotected” and “at the mercy of alleged paramilitary groups.” In this regard, the Commission also stated, separately, “that dozens of alleged paramilitary individuals” had occupied “certain areas” of the collective land of these communities, and that the authorities were allegedly aware of their presence. The Commission also indicated that only “a small group” of military personnel from Brigade 17 had returned to the region, “but did not return to direct control of the perimeter of the humanitarian areas,” and that a group of “approximately [...] 40 paramilitary personnel were present permanently” behind the Humanitarian Zone Camelias-El Tesoro and between the humanitarian zone Caño Claro-Andalucía” (*supra* Considering 11). In the Commission’s opinion, these facts have led to a situation of shared risk for the humanitarian and biodiversity zones and for the leaders of the

Jiguamiandó and Curvaradó communities for whom the expansion of the provisional measures was requested. In addition, the Commission also referred vaguely to alleged acts of threats and harassment against various inhabitants of the humanitarian and biodiversity areas, for whom the expansion of these measures was also requested (*supra* Considering 12).

25. The Court considers that an adequate assessment of the request for expansion of provisional measures implies a differentiated analysis of the five situations presented by the Inter-American Commission. On one hand, the Court observes that the alleged increase in families within the humanitarian and biodiversity zones - whose members are already beneficiaries of the instant provisional measures (*supra* Considering 12, subparagraph a) – would imply, as requested by the Commission although not clearly, an update to the number of beneficiaries of said measures, and not an expansion thereof. This, with the understanding that the humanitarian and biodiversity zones under consideration are those already included in this matter. In this regard, the Court finds it natural that the number of families in those humanitarian and biodiversity zones has changed over the more than eight years the provisional measures have been in force. In this regard, the Court notes that the number of families currently residing in these humanitarian and biodiversity zones covered by these provisional measures increased from 161 to 214.

26. Similarly, for the reasons indicated in the considering paragraph above, the Court observes that the situation mentioned by the Commission regarding the “[a]rrival of new families” to the humanitarian areas of Pueblo Nuevo, Nueva Esperanza, El Tesoro and Andalucía-Caño Claro (*supra* Considering 12, subparagraph b), also constitutes an update of the number of beneficiaries and not an expansion of the provisional measures in a strict sense, given that the humanitarian zones in question are already included in the instant matter. Therefore, the Court notes the update in the number of families resident in these humanitarian zones.

27. However, regarding the situation described by the Commission in which 15 families whose members were originally beneficiaries of the provisional measures because they were living in the El Tesoro humanitarian zone and Andalucía-Caño Claro humanitarian zone – included in the instant provisional measures – moved and created the new Camelias-El Tesoro humanitarian zone - currently comprised of 26 families – the Court finds that this is not a mere update of the situation of the original beneficiaries but a formal claim for expansion of the provisional measures (*supra* Considering 12, subparagraph c). The Commission requested these types of measures for all of the members of the “new” Camelias-El Tesoro humanitarian zone, which comprises other families that are not beneficiaries of the provisional measures. In this regard, in the Order of August 30, 2010 (*supra* Having Seen 1), in response to a similar request previously submitted by the representatives, the Court highlighted – as previously mentioned – the collective character of the instant provisional measures in addition to a large number of beneficiaries thereof and their different geographic locations. Therefore, in a situation of this nature, the Court found that the provisional measures mechanism requires that the requirements found in the Convention of gravity, urgency, and irreparable nature of the damage be confirmed, as indicated in Article 63(2) of the Convention, with regard to the persons for whom the measures are intended. In this regard, the fact that the humanitarian zone of Camelias-El Tesoro is currently comprised of members that were originally beneficiaries of these measures is not sufficient to automatically award all of its members an expansion of the measures, based on the sole fact of alleged sharing of risk factors with members of the humanitarian and biodiversity areas who are beneficiaries of the protection measures ordered by the Court. Because it is a “new” humanitarian zone, as described by the Commission, and located in a different area than the other zones, as inferred from the maps provided by the Commission, (*supra* Considering 15), the Court finds that in this specific case, it must be proven that the requirements established in Article 63(2) of the Convention are present. In this regard, the Inter-American Commission based its request for

expansion of measures on general statements, without providing additional elements of the possible manner, time, and place that would allow the Court to adequately appreciate the specific situation of extreme gravity and urgency, and of irreparable damage to the Camelias-El Tesoro humanitarian zone. Therefore, the Court finds that the provisional measures shall not be extended to the members of said humanitarian zone.

28. On the other hand, as inferred from the Commission's request, the situation of the humanitarian zones of Caño Manso, Argenito Díaz and el Caracolí, and of the biodiversity zones "No hay como Dios," "Los Caracoles," "Orlando Valencia," "El Martirio," and "Lejano Oriente" (*supra* Considering 12, subparagraph d), does correspond to a formal request for expansion of these measures. Effectively, these are humanitarian and biodiversity zones that are not covered in the instant matter. However, for the reasons presented in the considering paragraph above, the Court deems that the measures requested to the benefit of the members of those areas are also inadmissible.

29. With regard to the alleged "plan for mass murder of male and female leaders," the Court observes that the Commission has referred to this plan in very general terms, and that it also failed to provide elements that would allow for an assessment of the specific situation and the need for special protective measures to the benefit of Ligia María Chaverra, Uriel Tuberquia, Enrique Petro, Manuel Denis Blandón, Erasmo Sierra, Eustaquí Polo, Ladis Tuirán, Nohemi de Saya, Alfonso Saya, Santander Nisperuza, Liria Rosa García, Raúl Salas and Miguel Hoyos. The Court notes that in the Orders of February 2008 and August 30, 2010, handed down the instant matter (*supra* Having Seen 1), it ordered the State to adopt the necessary special protective measures to the benefit of Ligia María Chaverra and Manuel Denis Blandón. In addition, pursuant to the Order of August 30, 2010, the Court noted that the State is providing protective measures to Enrique Petro, and urged it to continue adopting the individual measures necessary to his benefit. In this regard, in its request the Commission did not clarify or present arguments with regard to why additional or different protective measures would be necessary for these persons. The Court reiterates that the mere existence of "risk factors" does not in itself satisfy the requirements of extreme gravity," urgency and irreparable damage⁸ under the terms of Article 63(2) of the American Convention sufficiently to grant or expand provisional measures. Therefore, the Tribunal rejects the request made by the Commission to the benefit of all of the above-mentioned persons.

30. Without detriment to the foregoing, the Court reminds the State that Article 1(1) of the American Convention establishes the general obligation of State Parties to respect the rights and freedoms recognized therein and to guarantee their free and full exercise to all individuals under its jurisdiction, under all circumstances. Consequently, independently of the existence of specific provisional measures,⁹ the State is especially obligated to guarantee the rights of all members of the Jiguamiandó and Curvaradó Communities. The Court emphasizes that in the instant Order, the measures adopted by the State to address the situation of the members of these communities (*supra* Considering 18 to 23) have already been mentioned. The Court therefore urges it to continue in those efforts.

⁸ Cf. *Case of the Constitutional Court*. Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of March 14, 2001, Considering 4; *Matter of Carlos Nieto Palmo et al.* Provisional Measures regarding the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of January 26, 2009, Considering 15, and *Matter of Liliana Ortega et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 9, 2009, Considering 35.

⁹ *Matter of the Mendoza Prisons*. Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 26, 2010, Considering 52.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority conferred upon it by Article 63(2) of the American Convention and Article 27 of the Court's Rules of Procedure,

DECIDES TO:

1. Take note of the update of the number of families in the humanitarian and biodiversity zones covered by the instant provisional measures, under the terms of Considering paragraphs 25 and 26.

2. Reject the request for expansion of provisional measures presented by the Inter-American Commission on Human Rights through the communication of April 29, 2011, under the terms of Considering paragraphs 27 to 29.

2. Ask the Court's Secretariat to notify the Inter-American Commission on Human Rights, the representatives of the beneficiaries of these provisional measures, and the Republic of Colombia of this Order.

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