

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 8, 2013**

**PROVISIONAL MEASURES REGARDING
THE REPUBLIC OF COLOMBIA**

MATTER OF GIRALDO CARDONA *ET AL.*

HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights of October 28, 1996, as well as the Orders of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) of February 5 and April 16, 1997, June 19 and November 27, 1998, September 30, 1999, December 3, 2001, November 29, 2006, February 2, 2010 and February 22, 2011, requiring the State to adopt provisional measures in this matter and monitoring their implementation. In the last Order, the Court decided, *inter alia*:

1. To require the State to maintain and adopt all necessary measures to continue protecting the life and physical integrity of Islena Rey and Mariela Duarte de Giraldo, as well as the latter’s two daughters, Sara and Natalia Giraldo.
2. To require the State to provide information on the undertaking made before this Court to officially ask the Justice and Peace Unit, responsible for investigating incidents relating to the region of Meta, to specifically question those who appear before it about the facts related to this matter.
3. To request the State to submit to the Inter-American Court of Human Rights, by June 1, 2011, at the latest, a detailed and thorough report indicating the measures it has adopted to comply with the provisions of the first operative paragraph of this Order, as well as the information required in considering paragraphs 20, 21, 29, 33 and 46 thereof.
4. To request the representatives of the beneficiaries to present their observations on the State’s report indicated in the preceding operative paragraph within four weeks of receiving it, together with the information requested in considering paragraphs 29 and 33 thereof.
5. To request the Inter-American Commission on Human Rights to present its observations on the State’s report indicated in the third operative paragraph of this Order within six weeks of receiving it.

6. To reiterate to the State that it must allow the beneficiaries of these measures to take part in the planning and implementation of the measures and, in general, keep them informed of any progress in the execution of the measures.
[...]

2. The briefs of March 23, June 22, October 11, and November 1 and 16, 2011, as well as the briefs of January 16, March 28, May 17, July 16, September 11, and November 15, 2012, in which the Republic of Colombia (hereinafter the "State" or "Colombia") reported on the implementation of the provisional measures in this matter. Also, in several of its briefs of observations, Colombia asked the Court to consider the possibility of lifting the provisional measures regarding the beneficiaries Mariela Duarte, widow of Giraldo, and her daughters Sara and Natalia Giraldo. On January 14, 2013 the State presented its final bimonthly report, which shall not be considered in this Order, given that the deadline for submitting observations to this report has not expired as of the date of this Order.

3. The communications of May 31, August 19, October 3, September 12, October 19 and December 29, 2011, as well as the communications of February 24, May 28 and September 13, 2012, in which the representatives of the beneficiaries (hereinafter the "representatives") presented their observations on the State's report, and to its request to partially lift the measures, as well as additional information concerning the "postponement" of the reopening ceremony of the Civic Human Rights Committee of Meta (hereinafter "Civic Committee of Meta" or "Civic Committee").

4. The briefs of July 13 2011, February 14 and July 13 2012 and January 29, 2013, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented its observations to the State's reports and to its request for the partial lifting of the measures, as well as to the corresponding observations and information submitted by the representatives regarding the implementation of these provisional measures.

CONSIDERING THAT:

1. Colombia has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since July 31, 1973, and recognized the contentious jurisdiction of the Inter-American Court, pursuant to Article 62 of the Convention, 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." This provision is in turn regulated in Article 27 of the Court's Rules of Procedure¹ (hereinafter "the Rules"), which establishes that such measures may be applied provided that the basic requirements of extreme gravity and urgency, and the need to avoid irreparable damage to persons, are met. These three requirements are concurrent and must persist for the Court to maintain the protection ordered; if one of these no longer

¹ Rules of Procedure of the Court approved at its Eighty-fifth Regular Period of Sessions, held on November 16-28, 2009.

exists, it will be up to the Court to assess the appropriateness of continuing with the protection ordered.²

3. According to Article 63(2) of the Convention, the provisional measures ordered by the Court are binding on the State, because a basic principle of international law, supported by international case law, indicates that States must comply with their international treaty obligations in good faith (*pacta sunt servanda*).³

4. Under international human rights law, provisional measures are not only preventive in the sense that they preserve a juridical situation, but they are also essentially protective because they protect human rights, insofar as they seek to avoid irreparable damage to persons. Provisional measures are applicable provided the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met. Thus, provisional measures become a real jurisdictional guarantee of a preventive nature.⁴

5. The State has repeatedly requested that the Court partially lift these provisional measures with respect to three of the four beneficiaries, namely Mrs. Mariela Duarte, widow of Giraldo, and her daughters Sara and Natalia Giraldo. In this regard, the Court reiterates that, pursuant to its jurisdiction within the framework of provisional measures, it can only consider the merits of arguments relating strictly and directly to extreme gravity and urgency and the need to avoid irreparable damage to persons. Thus, in order to decide whether to maintain the provisional measures in effect, the Court must analyze whether the situation of extreme gravity and urgency that led to their adoption persists, or whether new circumstances, which are equally grave and urgent, warrant keeping them in force. Any other issue may only be brought to the Court's attention by means of a contentious case.⁵ The Court recalls that these provisional measures were adopted in October 1996, following a request by the Inter-American Commission in relation to an application filed before that body due to alleged threats, harassment, persecution, executions, forced disappearances and forced displacements of members of the Civic Committee of Meta. After the Commission adopted precautionary measures in favor of members of the Civic Committee, on October 13, 1996 Mr. Josué Giraldo Cardona, President of said Committee, was murdered.⁶ In his Order of October 28, 1996 the President of the Court considered that "the violent antecedents and new acts of violence and aggression against members of the Civic Human Rights Committee of Meta, which have occurred since 1992, constitute a situation of imminent and grave danger."⁷ Furthermore, the Court notes that in its observations of April

² Cf. *Case of Carpio Nicolle*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of July 6, 2009, Considering paragraph 14, and *Case of 19 Tradesmen*. Provisional Measures regarding Colombia. Order of the Inter-American Court of June 26, 2012, Considering paragraph 22.

³ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of August 29, 1998, Considering paragraph 6, and *Matter of Alvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of November 23, 2012, Considering paragraph 2.

⁴ Cf. *Case of the Newspaper "La Nación"*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of September 7, 2001, Considering paragraph 4, and *Matter of Mery Naranjo et al.* Provisional Measures regarding Colombia. Order of the Inter-American Court of March 4, 2011, Considering paragraph 5.

⁵ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of August 29, 1998, Considering paragraph 6, and *Case of 19 Tradesmen*. Provisional Measures regarding Colombia. Order of the Inter-American Court of June 26, 2012, Considering paragraph 5.

⁶ Cf. *Matter of Giraldo Cardona et al.* Provisional Measures regarding Colombia. Order of the President of the Court of October 28, 1996, Having Seen paras. 1, 3 and 4. This decision was ratified by the Court through the Order of February 5, 1997, Operative para. 1.

⁷ Cf. *Matter of Giraldo Cardona et al.* Provisional Measures regarding Colombia. Order of the President of the Court of October 28, 1996, Considering paragraph 5.

22, 2010 the Inter-American Commission reported that the case of Josué Giraldo Cardona was in the stage of admissibility and merits.

6. In this Order the Court will examine: (A) the status and implementation of the provisional measures ordered in favor of Islena Rey Rodríguez, current President of the Civic Committee; (B) the application of the provisional measures adopted in favor of Mariela Duarte, widow of Giraldo, and her daughters Sara and Natalia Giraldo; (C) the reopening ceremony of the Civic Human Rights Committee of Meta, and (D) investigations into the facts related to these measures.

A. Regarding the status and implementation of the provisional measures ordered in favor of Islena Rey

A.1. Information and observations regarding changes in the protection scheme in favor of the beneficiary

7. In its reports, the State has informed the Court about the restructuring process, insofar as this relates to these provisional measures, which involved the elimination of the Department of Administrative Security (DAS), the agency responsible for implementing the security arrangements for the beneficiary Islena Rey, under the coordination of the Human Rights Office of the former Ministry of the Interior and Justice. Colombia reported, *inter alia*, that Decree 1030 of 2010 established that the responsibilities of the DAS Protection Program “w[ould] be gradually reduced,” as the different stages of the process to transfer the respective protection schemes were completed. The State explained that it would not leave unprotected any of those beneficiaries who, upon the expiry of the DAS contract, had been assigned a protection scheme by that entity.⁸

8. The representatives reiterated their “uncertainty [regarding] the future administration of the protection scheme in favor of the beneficiary Islena Rey.” They noted that, given the imminent expiry of the regulation that extended the functions of the DAS, periodic decrees for their temporary extension were issued, which caused uncertainty about the continuity of the protection scheme. The representatives also argued that there was a lack of certainty regarding the criteria and requirements for assigning escorts to the beneficiary’s protection scheme, supposedly as a result of the transition process.

9. According to information contained in the briefs presented by the parties, in this context a process of consensus was undertaken in which the State suggested, as an initial option for transferring the functions of the DAS, that private operators take over the protection scheme. The representatives raised objections to the suggestion, arguing that this arrangement would imply “the dissolution of the State’s responsibility [...] and [its] delegation [...] to a third party; the lack of a strict and preventive supervision by the State to facilitate continuous monitoring of the beneficiary; [and would] grant powers to the [o]perator of the scheme that would cause concern because of their effects on the implementation of the measures.” The representatives added that they would “wait to hear [...] the second alternative presented by the State [...] in relation to the possible creation of a ‘department’ or ‘agency’ [...] to assume the task of running the mobile protection schemes.”

⁸ Cf. *Matter of Giraldo Cardona et al.* Provisional Measures regarding Colombia. Order of February 22, 2011, Considering paragraph 8.

10. Subsequently, the State referred to the option of a private operator taking charge of implementation and asserted, *inter alia*, that the protection system for Mrs. Islena Rey, consisting of a vehicle and personnel, would not be subject to any change. It also explained the reasons why it considers that the changes stemming from the governmental restructuring “do not affect or interfere with the international obligations of the State” and affirmed that “it is not true that the State is delegating its responsibility to a third party” when entrusted with the implementation of physical protection measures. It emphasized that the measures would continue to be approved by the State, and that the private firm would be subject to rules of supervision and monitoring by the State. Furthermore, Colombia reported that “on October 31, 2011, Decree 4065 was issued, which created the National Protection Unit –UNP- for the purpose of articulating, coordinating and executing protection services and thereby unifying the procedures, so that [sic] only one entity will be in charge of assuming this obligation.” It also pointed out that, at the request of the petitioners, the Ministry of the Interior summoned the beneficiary and her representatives to two meetings in order to discuss and consider the possibility of transferring Mrs. Islena Rey’s protection scheme to a specific private operator, but that the beneficiary did not accept that transfer.

11. In response to the foregoing, the representatives stated that it was not true that the beneficiary had refused to accept the transfer of her scheme but had “ask [ed] the officials to provide information regarding the ‘Temporary Union’ system and on the new regulations concerning the National Protection Unit [...] to be able to study the offers.

12. Next, the State referred in greater detail to the aforementioned National Protection Unit and indicated that twelve state institutions are involved in one or several stages of the protection strategy. The State also emphasized that the National Protection Unit would “guarantee that the security unit in charge of the protection program was separate from the body responsible for intelligence and counterintelligence activities.” Furthermore, Colombia referred to the alleged uncertainty in the criteria and requirements for adding an escort to Mrs. Islena Rey’s scheme, and argued that, “given the legal powers assigned, it is not possible for [the National Protection Unit] to directly hire the escort units.”

13. The State then reported that, following a meeting held on May 28, 2012 between the beneficiary and officials of the National Protection Unit, the former had “express[ed] her agreement to have the protection system transferred to a private security firm from July 1, 2012.” In this regard, the representatives emphasized that “Islena Rey had no other alternative [than to] accept this transfer, since according to the National Protection Unit [...] it was not possible for her two trusted escorts to be incorporated into this unit [and that,] if this transfer were not accepted, the beneficiary ran the risk of being left without a protection scheme.” The representatives also submitted to the Court a “Letter of Agreement” signed by the beneficiary Islena Rey Rodríguez and the Coordinator for Monitoring Measures and Human Rights of the National Protection Unit of the Ministry of the Interior, which states that: “the [S]tate shall be directly responsible for the protection provided to persons who find themselves in an exceptional or extreme situation of risk, [that the] [p]rivate [o]perator will only provide any logistical support required for the supervision of the contract, and therefore the protected person and the private operator would not have a direct bearing on the proper functioning of the scheme [and that t]he relationship between the National Protection Unit and the beneficiary continues under the same terms as it has been managed to date and the UNP will be the unit responsible for the optimum functioning of the protection scheme assigned to the beneficiary of the provisional measures.”

14. In its brief of observations of July 13, 2011, the Inter-American Commission appreciated the State's explanation that the beneficiary's protection scheme would remain unchanged, despite the transfer of the DAS' functions, but regretted the lack of clarity in the implementation of the scheme and the prospects for the immediate future. It considered that the State should clarify the situation regarding the private contractors, the period during which they were expected to carry out the functions entrusted by the DAS and the possibilities of creating a State entity for those purposes. The Commission also considered it necessary that "in the context of the mechanism for implementing these measures the representatives [have] access to relevant information." Subsequently, in its observations of February 14, 2012, the Commission took note of the creation of the National Protection Unit of the Ministry of the Interior, of the extension of the functions of the DAS regarding Mrs. Islena Rey's protection scheme and of the additional information provided on the contract with the private firm, and called for "a fluid and constant dialogue to be maintained between the parties, in order to ensure that any change is approved by the beneficiary and responds to her protection needs."

A.2. Information and observations regarding the measures of security and protection adopted in favor of the beneficiary

15. According to information provided to the Court, the protection scheme assigned by the State to the beneficiary Islena Rey Rodríguez consists of a vehicle and two or three escort units,⁹ support for the payment of per diem allowances, road tolls and fuel, as well as a mobile phone. In addition, "police inspections" are carried out at the beneficiary's home and workplace. In this regard, the representatives and the State reported problems with the vehicle and the aforementioned support which, on one occasion even prompted the beneficiary to take the decision to "give up the security arrangements in the absence of an agreement on decisions related to her protection", and on another occasion because of a reduction in the amounts provided for fuel. In that context, several contacts and discussion meetings took place between the parties where they first reached temporary solutions, and subsequently, agreements that overcame the problems. This included the assignation of a new vehicle, an increase in the amount of fuel authorized given that it was an armored vehicle and a procedure for applying for vouchers for fuel and road tolls, and for requesting an increase in the amount provided for fuel.

16. The representatives also reported on a problem concerning the beneficiary's ability to move in the event of an emergency, and referred to the procedures required by the State to authorize such movements and the corresponding per diem allowances given that, according to the latter, there were constraints of an administrative nature. According to information provided by the representatives and the State, during the follow-up discussion meeting held on April 8, 2011, the State clarified the issue of the administrative procedure for authorizing movements within the protection scheme, and offered a solution which, according to the State, "does not [imply] avoiding the procedures, but [...] speeds [these] up so that it is possible to guarantee the mobility of the scheme without problems of an administrative nature arising afterwards."

17. In its brief of observations of February 14, 2012, the Inter-American Commission "appreciate [d] the State's willingness [to] resolve the problems that have arisen in relation

⁹ In the brief of February 24, 2012, the representatives stated that "the protection scheme of Islena Rey Rodríguez consists of two trusted escorts and not three escorts." In a communication of July 16, 2012, the State reported that "currently, Mrs. Islena Rey has two (2) escort units linked through the private security operator, which is in the process of contracting the third escort unit."

to different aspects of the protection scheme [but] note [d] that beyond specific solutions to each of those difficulties, their continuation in different areas could indicate structural failings in the implementation and coordination of the measures." The Commission considered it necessary "that the State, based on the problems that have arisen, make the necessary efforts to ensure close and continuous monitoring of the provisional measures, in order to avoid problems of an everyday nature which, in the long run, may end up having a negative impact on the effectiveness of the protection itself." The Commission expressed concern regarding problems related to "the amounts to facilitate [the beneficiary's] movements, as well as the conditions and formalities that would continue to be required of her and her escorts in the context of those movements." It emphasized that "it is essential that, in the context of the dialogue on the implementation of the provisional measures, the State take into consideration the particularities of the beneficiary's work and the need to adopt the solutions necessary to comply with the provisional measures, bearing in mind those particularities."

A.3. Information and observations regarding the situation of risk to the beneficiary

18. As to new developments that affect the situation of risk to the beneficiary, the representatives reported that "[o]n November 4, 2011 [...] six or seven people [...] wearing badges of the Technical Investigation Corps (C.T.I) of the Attorney General's Office visited the premises of the Civic Committee of Human Rights of Meta [; they] proceeded to inspect the building where the Committee has its offices and to take photographs." They also stated that "Islena Rey Rodríguez, who was not in the Committee's office at that time, as soon as she was informed of that situation reported it to Police authorities [and] sent a written communication to the Head of the investigations department of the C.T.I, based in Villavicencio, asking him to confirm whether officers of that department had carried out this procedure and, if so, on what legal grounds." According to the representatives, more than a month later, the Head of the C.T.I.'s investigations department responded in writing to the beneficiary, "assuring her that no official of that [d]ivision of the C.T.I. had carried out an inspection procedure and photographic survey of the Committee's headquarters." The representatives forwarded a copy of said communication. The attachments to the brief of the representatives include an official letter issued by the Attorney General's Office informing the beneficiary that the persons who had presumably perpetrated the actions mentioned "were prosecuted [...]" and the case was sent to the Office of Assignations [...] for its respective distribution."

19. In this regard, on March 28, 2012 the State reported that during a follow-up meeting held on February 9 of that year "the beneficiary and the petitioners recounted the events of November 4, 2011" and stated that "the Attorney General's Office report [ed] that it was carrying out all pertinent actions to investigate the facts [and that t]he the Inspector General's Office [...] agreed to carry out the relevant procedures to establish a special agency in [this] investigation."

20. In its observations of July 13, 2012 the Inter-American Commission pointed out that "the State did not provide detailed information on the incident that occurred on November 4, 2011 [and that] it consider[ed] that [this] event w[as] worrying and expect [ed] the State to give the greatest priority to the investigation announced into this incident, since the timely identification of the source of risk and the implementation of appropriate measures to address could depend on this."

21. Subsequently, in its brief of September 11, 2012, the State reported that the events of November 4, 2011 "related to the photographs taken at the Committee's headquarters [,

...t]he Attorney General's Office [...] reported that the 31st Local Prosecutor's Office attached to the District Prosecutors' Office of Villavicencio is conducting [...] inquiries [...] into the crime of violation of the rights to meet and freedom of association [and that] at present [it] is implementing a methodological program and [that] on July 13, 2012 a technical-legal committee met."

22. The parties reported that several studies had been carried out and recommendations made regarding the situation at the office of the Civic Committee of Meta. Likewise, the representatives stated that in May 2011, a contractor from the Ministry of the Interior had arrived at the office, without prior notice, to carry out an assessment of the building and that on June 9, contractors from that institution appeared to install a bullet-proof door and other features, which was not accepted by the beneficiary since she was not present at the place and those activities were not previously coordinated with her. Subsequently those measures were not implemented and the beneficiary says she is not aware of the risk assessment carried out by the State. Colombia reported that "spaces have been provided in the city of Villavicencio, the place where the Civic Human Rights Committee of Meta has its headquarters [, ...] to discuss with local and regional authorities, matters concerning the protection of the beneficiary and the offices of the organization [and that it] ha[d] proceeded to implement those physical measures of protection that are consistent with Colombian regulations." In its report of November 15, 2012, the State reiterated that Islena Rey's protection scheme includes police inspections at her workplace. The Inter-American Commission stated that it did not have complete and detailed information on that point.

A.4. Considerations of the Court regarding the situation and measures of protection adopted in favor of the beneficiary Islena Rey Rodriguez

23. As to the State restructuring process and its implications (*supra* Considering paras. 7 to 14), the Court notes that the abolition of the DAS, the organization in charge of implementing the protection measures for Islena Rey Rodriguez, implied that its functions had to be transferred and that temporally there was no certainty about the specific consequences and conditions of the beneficiary's protection scheme. Specifically, the Court confirms that the functions of the DAS were extended on several occasions, due to their imminent expiry, and takes note of the uncertainty caused regarding the future operation of the protection scheme, given that the regulatory frameworks for the two options offered by the State, namely, that the service would be either be provided by a private operator or by a new state agency, were adopted several months after the decision was taken to abolish the DAS.¹⁰

24. The Court recalls the importance of allowing beneficiaries and their representatives to participate in the planning and implementation of provisional measures, so that they are fully informed of the security measures adopted in their favor.¹¹ In that sense, the Court commends the process of dialogue and consensus undertaken in response to the concerns and objections raised by the representatives. From the information provided by the parties, the Court understands that this process concluded with the adoption of a model whereby a private operator would take on the physical implementation of the protection measures, with exclusive functions of logistical support, but the State would assume direct

¹⁰ The Court had taken note of those changes in its previous Order. *Cf. Matter of Giraldo Cardona et al.* Provisional Measures regarding Colombia. Order of February 22, 2011, Considering paragraph 21.

¹¹ *Cf. Case of Caballero Delgado and Santana.* Provisional Measures regarding Colombia. Order of July 4, 2006, Operative paragraph 4, and *Case of 19 Tradesmen.* Provisional Measures regarding Colombia. Order of June 26, 2012, Considering paragraph 16.

responsibility for its obligations to protect the beneficiary and maintain a direct relationship between the beneficiary and her representatives and the recently created National Protection Unit of the Ministry of the Interior (*supra* Considering paras. 10 to 13).

25. At the same time, this Court notes that problems have arisen in the operation of the beneficiary's scheme, specifically with the vehicle, per diem allowances, road tolls and fuel expenses, as well as with the procedures established for authorizing her movements in urgent situations. In this regard, it is essential that the State and the representatives coordinate the implementation of the provisional measures, which implies that the parties must propose and agree upon measures, in case one of the parties considers that the existing ones are not adequate.¹² The Court appreciates the fact that, as a result of various follow-up meetings and a fluid dialogue between the parties, those problems have been reasonably overcome by means of measures through which the State has made an effort to respond to the specific requirements of the beneficiary (*supra* Considering paras. 15 and 16).

26. In addition, the Court takes note of the incident reported by the representatives that, allegedly, on November 4, 2011 a group of people wearing badges of a State investigative agency attached to the Attorney General's Office had inspected and photographed the offices of the Civic Committee of Meta, as well as the information provided by the State in the sense that it would be implementing the necessary actions to judicially investigate those actions (*supra* Considering paras. 18 to 21). As to the State's commitment to analyze and adopt measures regarding the offices of the Civic Committee, the Court confirms that the parties forwarded information in this regard during 2011, but did not do so during 2012. Consequently, the Court recalls that the measures of protection must be agreed with the beneficiary and her representatives¹³ and understands that the State considers that the "police inspections" currently carried out in the beneficiary's workplace would be sufficient to prevent any risks against her materializing at her workplace (*supra* Considering paragraph 22).

27. The Court recalls that it is not sufficient for the State to adopt specific measures of protection; it is also necessary to ensure that these are implemented effectively, so that the risk to those whose protection is sought ceases.¹⁴ In relation to the protection required by the beneficiary Islena Rey, the Court considers it pertinent that in its next report the State refer to the specific measures taken to prevent the repetition of events such as those of November 4, 2011.

28. The Court considers it appropriate to maintain the provisional measures in favor of Islena Rey and, therefore, requires the State to maintain, and, where applicable, to adopt all the measures necessary to protect her life and personal integrity. However, the Court also deems it necessary to recall that provisional measures have an exceptional character, are ordered based on the need for protection and are related to a specific temporary

¹² Cf. *Matter of Mery Naranjo et al.* Provisional Measures regarding Colombia. Order of the Inter-American Court of January 31, 2008, Considering paragraph 12, and *Matter of Mery Naranjo et al.* Provisional Measures regarding Colombia. Order of the Inter-American Court of November 25, 2010, Considering paragraph 28.

¹³ Cf. *Case of Caballero Delgado and Santana.* Provisional Measures regarding Colombia. Order of July 4, 2006, Operative paragraph 4, and *Case of 19 Tradesmen.* Provisional Measures regarding Colombia. Order of June 26, 2012, Considering paragraph 16.

¹⁴ Cf. *Matter of Alvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of November 26, 2010, Considering paragraph 26, and *Case of 19 Tradesmen.* Provisional Measures regarding Colombia. Order of June 26, 2012, Considering paragraph 12.

situation and, by their very nature, cannot be perpetuated indefinitely.¹⁵ In this regard, it is necessary to emphasize that these measures have been in force before this Court for more than sixteen years (*supra* Considering paragraph 5). Likewise, the Court appreciates that Colombia has been implementing a protection scheme in favor of Mrs. Rey and that it has made an effort to meet the specific requirements of the beneficiary. According to the information provided, dialogue and consensus between the parties have made it possible to gradually overcome the problems that have arisen in a reasonable way, having regard to the beneficiary's requirements, and there is greater clarity regarding the regulatory framework that governs the current protection scheme, the functions of the private operator that provides the protection and the direct responsibility that the State has acknowledged with regard to its obligations to protect the beneficiary (*supra* Considering paras. 7 to 16).

29. Accordingly, and recalling that the Court's intervention through the issuance of provisional measures is subsidiary and complementary, an order to adopt or maintain provisional measures is only justified in the situations established in Article 63(2) of the American Convention, in which the ordinary guarantees that exist in the State where they are requested are insufficient or ineffective, or the domestic authorities cannot or will not enforce them.¹⁶ Based on the foregoing considerations, this Court deems it pertinent to request the parties to submit information regarding whether such conditions exist so that the State may continue adopting the measures necessary to guarantee the rights to life and personal integrity of Mrs. Islena Rey Rodríguez, President of the Civic Committee, regardless of any specific provisional measures ordered by the Inter-American Court, in compliance with its general obligations under Article 1(1) of the American Convention, that is, to respect and guarantee the full exercise of human rights. This information shall be presented by the State within the term established in Operative paragraph 5 of this Order, and by the representatives within the term established in Operative paragraph 6. The Commission may submit any observations that it deems pertinent within the term established in Operative paragraph 7.

B. Application of the provisional measures adopted in favor of Mariela Duarte widow of Giraldo and her daughters Sara and Natalia Giraldo

30. The State has repeatedly asked the Court to lift the provisional measures in respect of these three beneficiaries, considering that the circumstances that gave rise to the adoption of provisional measures in their favor no longer exist. In its report of November 15, 2012 the State "emphasize[d] that nearly two (2) years have elapsed without the beneficiaries or their representatives reporting [to the State] any incident of threat, harassment or persecution [against them and have not] provided any information concerning a situation of risk related to the investigations and processes regarding the facts that gave rise to these provisional measures."

31. For their part, in a communication of August 19, 2011, the representatives informed the Court of "new facts that demonstrate the risk [faced by the beneficiaries and reported that,] during the week of July 13 to 17, 2011, a man telephoned the home of the Giraldo Duarte family, in the city of Villavicencio, asking what had happened to the family during

¹⁵ Cf. *Matter of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures regarding Colombia. Order of the Inter-American Court of August 30, 2010, Considering paragraph 70, and *Case of 19 Tradesmen*. Provisional Measures regarding Colombia. Order of June 26, 2012, Considering paragraph 27.

¹⁶ Cf. *Matter of the Mendoza Prisons*. Provisional Measures regarding Argentina. Order of the President of the Court of August 22, 2007, Considering paragraph 14, and *Matter of the Mendoza Prisons*. Provisional Measures regarding Argentina. Order of the Inter-American Court of July 1, 2011, Considering paragraph 40.

these years and, in particular, how and where the daughters of Josué Giraldo were." According to the representatives, the person "identified himself as a friend of Josué who was interested in knowing about the family, without giving more information," and "said that he would call again the following week, but did not do so, and since then no more calls have been received from that person." Furthermore, the representatives indicated that "Mrs. Mariela does not recall knowing that man and when she asked Josué's friends none of them recognized him." As to the request by Colombia to partially lift the measures, the representatives stated that "the assertions made by the State [...] are not consistent with its international obligations, because its conclusion is based on the absence of information [...] and not on elements of the State's activity to establish, seriously and diligently, the existence of risk." Subsequently, in their observations of December 29, 2011, the representatives stated that "except for the telephone calls received in July 2011 [...] there have been no reports of new incidents or attacks against [the beneficiaries, but] emphasize [d] that so far the Illustrious State has not provided information regarding the investigations into these facts or into previous incidents and attacks against Mariela Duarte and her daughters [and] consider[ed] that this information [...] would make it possible to determine whether the risks to the safety and physical and personal integrity of the beneficiaries still exist or have been overcome and, thus, be able to objectively decide on the continuation of the [p]rovisional [m]easures in relation to [these]." The argument concerning the lack of information in those investigations was reiterated by the representatives in their briefs of observations presented in 2012.

32. In this regard, the Inter-American Commission, in its brief of observations of February 14, 2012, "note [d] that [...] the information available to date is insufficient to assess the appropriateness of maintaining the provisional measures in favor of these beneficiaries [and] consider[ed] that there are relatively recent indications—the telephone calls reported by the representatives— that the situation of risk continues, which, in the absence of other elements of information, makes it difficult to reach a conclusive opinion on this point." This position was reiterated in its briefs of observations of July 13, 2012 and January 29, 2013. In this last brief, the Commission also "consider[ed] that the parties could seek an updated evaluation of the risk faced by these beneficiaries through the mechanisms established at the domestic level for those purposes."

33. Article 63(2) of the Convention requires the concurrence of three conditions for the Court to order provisional measures: a) "extreme gravity"; b) "urgency", and c) the need to "avoid irreparable damage" to persons. These three conditions must coexist and must be present in any situation in which the Court's intervention is requested. Likewise, the three conditions described must persist for the Court to maintain the protection ordered.¹⁷ If one of these has ceased to exist, it will be up to the Court to consider the pertinence of continuing with the protection ordered.¹⁸

34. The Court recalls that when ordering protection measures, the Court or its President may apply the principle of *prima facie* assessment of a case, which sometimes requires the application of assumptions when considering protection needs.¹⁹ Notwithstanding this,

¹⁷ Cf. *Case of Carpio Nicolle*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of July 6, 2009, Considering paragraph 14, and *Matter of Wong Ho Wing* Provisional Measures regarding Peru. Order of the Inter-American Court of April 27, 2012, Considering paragraph 3.

¹⁸ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of August 29, 1998, Considering paragraph 6, and *Matter of Wong Ho Wing* Provisional Measures regarding Peru. Order of the Inter-American Court of April 27, 2012, Considering paragraph 3 *in fine*.

¹⁹ Cf. *Case of Raxcacó Reyes et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of August 30, 2004, Considering paragraph 10, and *Matter of A. J. et al.* Provisional Measures regarding Haiti. Order of the Inter-American Court of February 22, 2011, Considering paragraph 11.

maintaining protection measures requires the Court to rigorously assess the persistence of the situation that gave rise to these.²⁰ In order to maintain provisional measures it is necessary that the circumstances of extreme gravity and urgency, and the need to avoid irreparable damage persist, along with their direct relationship with the facts that prompted the granting of the provisional measures in this case. Thus, having regard to the Court's requirements to consider the need to maintain these, this information must be duly demonstrated and justified.²¹

35. The Court points out that, based on the information provided by the parties since February 2011, when the last order was issued on this matter, the only fact that has been mentioned is a telephone call inquiring after the family. With respect to the Commission's argument that this fact would constitute an indication of continued risk (*supra* Considering paragraph 32), this Court considers that this event, of itself, is not directly related to the facts that prompted the adoption of these measures (*supra* Considering paragraph 2) and therefore it cannot conclude that a situation of extreme gravity and urgency persists.

36. As to the argument of the representatives that the State's failure to provide information on the status of the investigations into the facts of which the beneficiaries were allegedly victims (*supra* Considering paragraph 31), the Court recalls that the supposed lack of an investigation by a State does not necessarily constitute a situation of extreme gravity and urgency that warrants the adoption of provisional measures.²² Also, on certain occasions, the duty to investigate may be prolonged for a considerable period, during which time the threat or risk is not necessarily extreme and urgent. Moreover, this Court has stated that the analysis of the effectiveness of the investigations corresponds to the examination of the merits of the case.²³ Therefore, failure to fulfill the duty to investigate is not *per se* sufficient reason to order provisional measures.²⁴

37. The Court recalls that the effectiveness of the provisional measures depends, in great measure, on the real possibility of their being implemented;²⁵ thus, given the lack of information regarding the situation of risk during a prolonged period, the measures of protection are illusory.²⁶ The Court has also emphasized that provisional measures are of an

²⁰ Cf. *Matter of the Kankuamo Indigenous People*. Provisional Measures regarding Colombia. Order of the Inter-American Court of April 3, 2009, Considering paragraph 7, and *Matter of Haitians and Dominicans of Haitian origin in the Dominican Republic* Provisional Measures regarding Dominican Republic. Order of the Inter-American Court of February 29, 2012, Considering paragraph 28.

²¹ Cf. *Case of the Constitutional Court*. Provisional Measures regarding Peru. Order of the Inter-American Court of March 14, 2001, Considering paragraph 4, and *Case of 19 Tradesmen*. Provisional Measures regarding Colombia. Order of June 26, 2012, Considering paragraph 23.

²² Cf. *Case of Carpio Nicolle et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of July 6, 2009, Considering paragraph 24, and *Matter of Lilliana Ortega et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of July 9, 2009, Considering paragraph 17.

²³ Cf. *Matter of Pilar Noriega García et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of February 6, 2008, Considering paragraph 14, and *Case of 19 Tradesmen*. Provisional Measures regarding Colombia. Order of June 26, 2012, Considering paragraph 37.

²⁴ Cf. *Matter of Giraldo Cardona et al.* Provisional Measures regarding Colombia. Order of February 2, 2010, Considering paragraph 34, and *Case of 19 Tradesmen*. Provisional Measures regarding Colombia. Order of the Inter-American Court of June 26, 2012, Considering paragraph 37.

²⁵ Cf. *Case of Caballero Delgado and Santana*. Provisional Measures regarding Colombia. Order of the Inter-American Court of July 4, 2006, Considering paragraph 13, and *Case of 19 Tradesmen*. Provisional Measures regarding Colombia. Order of the Inter-American Court of June 26, 2012, Considering paragraph 44.

²⁶ Cf. *Case of the Massacre of Mapiripán*. Provisional Measures regarding Colombia. Order of the Inter-American Court of March 1, 2011, Considering paragraph 31, and *Case of 19 Tradesmen*. Provisional Measures regarding Colombia. Order of the Inter-American Court of June 26, 2012, Considering paragraph 44.

exceptional character, are issued based on the need for protection and refer to a specific temporary situation and, by their very nature, cannot be perpetuated indefinitely (*supra* Considering paragraph 28). Given that in the last two years no specific information has been provided to show a continued situation of risk, in accordance with the requirements established in Article 63(2) of the American Convention, the Court deems it appropriate to lift the provisional measures ordered in favor of Mariela Duarte, widow of Giraldo, and her daughters Sara and Natalia Giraldo.

C. Regarding the reopening ceremony of the Civic Human Rights Committee of Meta

38. As to the public ceremony to reopen the Civic Committee of Meta, in the last Order issued in 2011 regarding these provisional measures, this Court stated that it:

[...] takes note of the information provided regarding compliance with this measure and underlines the willingness expressed by the parties to reach agreement. However, given that several years have elapsed since its execution was requested, the Court urges the beneficiaries, their representatives, and the State to overcome the obstacles that have impeded the reopening of the Civic Committee of Meta to date, so that they reach final agreement this year. The Court awaits information from the parties in this regard.²⁷

39. According to information provided by the parties, a process of consensus took place on that point, with a detailed discussion of the nature and scope of the ceremony, as well as various logistical aspects. Based on the foregoing, the representatives reported in their brief of October 3, 2011 that “agreement has been reached on the [r]eopening ceremony at the Civic Committee of Meta, [...] the event has been programmed for October 13, 2011, the day on which they will also commemorate 15 years since the murder of Josué Giraldo Cardona.” This information was confirmed by the State in the brief dated October 11, 2011 where, among other matters, it reported that “[t]he reopening ceremony w[ould] be presided by the Minister of the Interior, who w[ould] be the official in charge of delivering the message of support to members of the Committee and to all human rights defenders in Colombia.”

40. Despite the foregoing, in a brief dated October 19, 2011, the representatives informed the Court that on October 12 of that year, that is, one day prior to the reopening ceremony, the petitioners asked State to “postpone the act”²⁸ and argued that the decision was due to “circumstances beyond [their] wishes and control that would negatively affect [the] holding of the [c]eremony and would nullify its expected effects [given that] some civil society organizations publicly stated, in an open letter widely circulated [that they were] opposed to carrying out the [a]ct because they considered that this negated the grave human rights situation in the region.” The representatives regretted this decision and insisted on the need to hold the ceremony “in the near future.”

41. In response, the State pointed out that it had “taken all the necessary steps to ensure that the reopening ceremony takes place [and has] invest[ed] countless resources, not only financial, but also human, for the sole purpose of ensuring the successful holding of the ceremony.” It added that “[although] in their communiqué the petitioners announce the

²⁷ Cf. *Matter of Giraldo Cardona et al.* Provisional Measures regarding Colombia. Order of February 22, 2011, Considering paragraph 33.

²⁸ According to information provided by the State, the message from the representatives announcing the decision to “suspend” the reopening ceremony was sent by email on October 12, at 6:30 p.m. approximately.

decision to 'suspend' the act, the State considers that since it was never consulted on this decision, and even the consensus process related to the provisional measures proceeding was disregarded, this amounted to a unilateral cancellation of the event". The State added that "[c]onsidering the foregoing and the time it has taken to reach agreement on this reopening ceremony and, bearing in mind the State's undertaking to transmit a message in support of the work carried out by members of the Civic Human Rights Committee of Meta [it was] analyzing some options, other than holding a reopening ceremony as initially envisaged, through which it could send this message of support and at the same time comply with the [measures] ordered by the [...] Court".

42. For its part, the Inter-American Commission, in its brief of observations of February 14, 2012, stated that "in these types of measures it is essential that the beneficiaries and their representatives are heard and that their opinions are taken into account to the extent possible." It added that "if, for the representatives and the beneficiary, the [r]eopening [c]eremony continues to be the most suitable means to accomplish the objective sought with this measure and to send an effective message of support, it is important that the State maintain a dialogue on this point, so that, as the representatives propose, the [c]eremony can be programmed for this year."

43. The Court recalls that the measure regarding the reopening of the Civic Committee of Meta was ordered in 1999²⁹, because the facts that gave rise to these provisional measures caused the temporary closure of that entity and, therefore, the beneficiary Islena Rey, in her role as President of that organization, could not carry out the activities inherent to her position as a human rights defender. In this regard, the Court emphasizes that the parties undertook a process of consensus and dialogue for three years in order to hold a public reopening ceremony, that the State reasonably fulfilled its commitments, and that its suspension was due to a unilateral decision by the representatives the day prior to the date on which it was planned to take place. Bearing in mind the present circumstances, as well as fact that the Committee has been operating for several years and that the protection measures agreed upon by the parties have been instrumental in allowing Islena Rey to carry out her work in defense of human rights in the department of Meta, the Court considers that the purpose of these measures, which is to protect the life and personal integrity of Islena Rey Rodriguez, can be assured without the need to require the State to hold a reopening ceremony for the Civic Committee.

44. Consequently, the Court urges the parties to continue making the necessary efforts to ensure that the Civic Committee of Meta can carry out its work in defense of human rights and welcomes the fact that other means are being considered to express support to it; however, in the context of these provisional measures, it will not continue monitoring compliance with this specific measure.

D. Regarding the investigations into the facts related to these measures

45. In the Order issued on February 22, 2011 regarding this matter, the Court required the State to provide information on "the undertaking [...]made [...]to officially ask the Justice and Peace Unit, responsible for investigating incidents relating to the zone of Meta, to specifically question those who appear before it about the facts related to this matter."³⁰

²⁹ Cf. *Matter of Giraldo Cardona et al.* Provisional Measures regarding Colombia. Order of September 30, 1999, Operative para. 3.

³⁰ Cf. *Matter of Giraldo Cardona et al.* Provisional Measures regarding Colombia. Order of February 22, 2011, Operative para. 2.

In this regard, the Court notes that the representatives submitted a document issued by the Attorney General's Office advising that:

[...] in the Meta region the Bloque Centauros, Frentes Héroes del Llano and Guaviare, and Autodefensas Campesinas of Meta and Vichada, committed crimes which are documented by the 5, 16, 24, 30 and 59 Prosecutors' Offices of the National Unit for Justice and Peace [...]. In relation to your request to indicate which members have confessed to criminal acts committed against the Civic Committee of Meta or its members, and through which actions, I wish to advise that the aforementioned information is obtained by way of unsworn statements (*versiones libres*) which, being part of the investigative tasks undertaken under the responsibility of the Attorney General's Office, are of a confidential nature, for which reason I would be grateful if you would forward a copy of the power granted by said Committee or its members in order to process your request accordingly.

46. At the same time, the State reported on the investigations into the aggravated murder of Josué Giraldo Cardona and the aggravated murder of Pedro Malagón and his daughter Elda Milena Malagón, which are being processed by the 95th Specialized Prosecutor's Office of the National Unit for Human Rights and International Humanitarian Law, as well as the investigation into aggravated theft being processed by the 27th Local Prosecutor of Villavicencio. It explained that all these processes are in the preliminary stages and that the Attorney General's Office had decided to establish special agencies for those inquiries. Subsequently, the State reported that the investigation regarding the photographic survey of the Civic Committee of Meta is being carried out by the 31st Local Prosecutor of Villavicencio and that it is implementing a methodological program and that a technical-legal committee has been established.

47. For their part, the representatives noted that the State had not provided specific information on the investigations by the competent authorities into the events of which the beneficiaries had been victims. The Inter-American Commission indicated that the investigations are an important element for assessing the continued risk affecting the beneficiaries Mariela Duarte and her daughters Sara and Natalia Giraldo.

48. The Court recalls that in previous orders on this matter, it established that the effectiveness of the investigations and procedures relating to the facts that gave rise to the provisional measures corresponded to the examination of the merits of the case³¹ and that, bearing in mind that a case on this matter is being examined by the Inter-American Commission, such considerations are beyond the scope of these provisional measures.³² Similarly, this Court understands that the State has fulfilled its commitment made at the public hearing on January 29, 2010, to officially request the Justice and Peace Unit to report on actions that could have been perpetrated by paramilitary groups against the Civic Committee or its members and does not consider it appropriate to comment on the effectiveness of those judicial procedures in the context of these provisional measures.

49. Moreover, the Court reiterates that Article 1(1) of the Convention establishes the general obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure the free and full exercise of those rights and freedoms to all persons subject to their jurisdiction. Consequently, regardless of the existence of specific provisional measures, the State is obliged to guarantee the rights of individuals in a situation of risk

³¹ Cf. *Matter of Giraldo Cardona et al.* Provisional Measures regarding Colombia. Order of February 2, 2010, Considering paragraph 34, and *Matter of Giraldo Cardona et al.* Provisional Measures regarding Colombia. Order of February 22, 2011, Considering paras. 41 to 43.

³² Cf. *Matter of Giraldo Cardona et al.* Provisional Measures regarding Colombia. Order of February 22, 2011, Considering paragraph 41.

and must expedite the investigations required to elucidate the facts, followed by the consequences established by the pertinent laws.³³

50. Accordingly, in the context of these provisional measures and, as it has done on other matters³⁴, the Court shall not refer to the investigation of the facts or to the manner in which the State is investigating. In that sense, the Court reiterates that it will not request the parties to provide further information on this point.

THEREFORE

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority granted by Article 63(2) of the American Convention on Human Rights and Articles 27 and 31 of the Court's Rules of Procedure,

DECIDES:

1. To require the State to maintain and to adopt all necessary measures to continue protecting the life and physical integrity of Mrs. Islena Rey Rodríguez.
2. To lift and consider concluded the provisional measures granted in favor of Mrs. Mariela Duarte, widow of Giraldo, and her daughters Sara and Natalia Giraldo, under the terms of Considering paragraphs 33 to 37 of this Order.
3. To conclude the process of monitoring the organization of a public ceremony for the reopening of the Civic Human Rights Committee of Meta, in accordance with Considering paragraphs 43 and 44 of this Order.
4. To reiterate that, in the context of these provisional measures, the Court will not examine information regarding the investigations related to the facts of this matter, including the undertaking made at the public hearing held on January 29, 2010 to officially require the Justice and Peace Unit to conduct inquiries, in accordance with Considering paragraphs 48 to 50 of this Order.
5. To request the State to present to the Inter-American Court of Human Rights, no later than April 14, 2013, a detailed and thorough report indicating the measures it has adopted to comply with the provisions of Operative paragraph 1 of this Order, as well as the information required in Considering paragraph 29 thereof.
6. To request the representatives of the beneficiary to present their observations on the State's report indicated in the preceding operative paragraph within four weeks of receiving it, together with the information requested in Considering paragraph 29 of this Order. Also,

³³ Cf. *Case of Velásquez Rodríguez*. Provisional Measures regarding Honduras. Order of the Inter-American Court of January 15, 1988, and *Case of the 19 Tradesmen*. Provisional Measures regarding Colombia. Order of the Inter-American Court of June 26, 2012, Considering paragraph 45.

³⁴ Cf. *Matter of the Children and Adolescents deprived of liberty in the FEBEM "Tatuapé Complex"*. Provisional Measures regarding Brazil. Order of the Inter-American Court of July 3, 2007, Operative paragraph 7, and *Case of 19 Tradesmen*. Provisional Measures regarding Colombia. Order of the Inter-American Court of June 26, 2012, Considering paragraph 46.

to request the Inter-American Commission of Human Rights to present its observations to the aforementioned State report and to the respective observations of the representatives, within six weeks of receiving these.

7. To reiterate to the State that it must allow the beneficiaries of these measures to take part in the planning and implementation of the measures and, in general, keep them informed of any progress made in their execution.

8. To reiterate to the State that it should continue reporting on the provisional measures adopted, every two months, and to require the representatives of the beneficiaries and the Inter-American Commission on Human Rights to submit their observations within four and six weeks, respectively, of notification of the said State reports.

9. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the beneficiaries.

Diego García-Sayán
President

Manuel E. Ventura Robles

Eduardo Vio Grossi

Roberto de Figueiredo Caldas

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary