

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 22, 2013***

**PROVISIONAL MEASURES WITH REGARD TO THE REPUBLIC OF COLOMBIA
MATTER OF THE COMMUNITIES OF THE JIGUAMIANDÓ AND OF THE CURVARADÓ**

HAVING SEEN:

1. The Orders of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the 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 decided, *inter alia*:

1. To reiterate to the State of Colombia that it must adopt, forthwith, all necessary measures to protect the life and personal integrity of the members of the communities constituted by the Community Council of the Jiguamiandó and the families of the Curvaradó, beneficiaries of these measures, pursuant to considering paragraphs 40 to 43 of th[e] Order[:]

2. To reiterate to the State of Colombia that it must establish a permanent monitoring and communication mechanism in the so-called "humanitarian zones," pursuant to considering paragraph 58 of th[e] Order[, and]

3. To reiterate to the State of Colombia that it must allow the representatives appointed by the beneficiaries of these measures to take part in the planning and implementation of the measures, and that, in general, it keep them informed of any progress in the measures ordered by the Inter-American Court of Human Rights, pursuant to considering paragraph 64 of th[e] Order. [...]

2. Also, the Order of the Inter-American Court of November 25, 2011, in which it decided, among other matters:

1. To take note of the updated information on the number of families [...] in the humanitarian zones and biodiversity zones covered by the [...] provisional measures, pursuant to considering paragraphs 25 and 26 [of the Order, and]

2. To reject the request for expansion of provisional measures filed by the Inter-American Commission on Human Rights in the communication of April 29, 2011, pursuant to considering paragraphs 27 to 29 [of the Order...].

3. The Order of the Court of February 27, 2012, in which it decided, *inter alia*:

* Judge Humberto Sierra Porto, a Colombian national, did not take part in the deliberation of this Order, pursuant to Article 19(1) of the Rules of Procedure of the Court approved at its eighty-fifth regular session, held from November 16 to 28, 2009.

1. To reject the request submitted by the Inter-American Commission on Human Rights to reconsider and/or to provide grounds for the Order of November 25, 2011, pursuant to the fourth considering paragraph of [the] Order. [...]

4. The briefs of October 11 and December 27, 2010; March 1, April 27, May 18, July 19, August 3, September 5 and 21, November 22 and 23, and December 14, 2011; January 18 and 27, April 9 and 17, May 18 and July 18, 2012, and January 15 and 29, February 5 and March 21, 2013, in which the Republic of Colombia (hereinafter “the State” or “Colombia”) presented information on the implementation of the provisional measures and referred to additional information forwarded by the representatives and by the Inter-American Commission (*infra* having seen paragraphs 5 and 6). Furthermore, in the briefs of August 17, September 21 and November 23, 2012, and January 29, February 5 and March 21, 2013, the State requested that the provisional measures be lifted.

5. The briefs of February 17, April 15, May 8 and July 25, 2011; August 2, 8, 29 and 30, October 10 and 20, November 17 and 29 2011; February 17, May 22 and 30, and June 13, 2012, and February 6 and May 6 2013, in which the representatives presented their observations on the reports of the State (*supra* having seen paragraph 4), as well as additional information related to presumed incidents involving extreme gravity and urgency. In addition, the brief of October 16, 2012, in which the representatives presented observations on the information provided by the State that had been requested by the Court in plenary regarding the maintenance of the provisional measures, among other matters (*supra* having seen paragraph 4 and *infra* having seen paragraph 7).

6. The briefs of April 16, July 19 and 22, August 10, November 16 and 23, 2011; January 9 and 13, March 20, June 14 and July 6 2012, and January 2 and 25, February 4 and May 10, 2013, in which the Commission forwarded observations on the reports of the State and presented additional information related to the implementation of these provisional measures and to the additional information provided by the representatives (*supra* having seen paragraphs 4 and 5). Also, the communication of October 17, 2012, in which the Commission forwarded its observations on the information forwarded by the State that had been requested by the Court in plenary (*supra* having seen paragraph 4 and *infra* having seen paragraph 7).

7. The note of the Secretariat of the Court (hereinafter “the Secretariat”) of July 4, 2012, in which, on the instruction of the Court in plenary, the State was requested to provide specific information related to these provisional measures in order to assess whether to maintain them. Also, the Secretariat’s note of August 28, 2012, in which, on the instructions of the President of the Court, the Inter-American Commission and the representatives of the beneficiaries were requested to present their observations on the information that the State had been asked to provide.

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 accepted the contentious jurisdiction of the Court on June 21, 1985.

2. The preamble of the American Convention establishes that:

Recognizing that the essential rights of man are not derived from one's being a national of a certain State, but are based upon attributes of the human personality, and that they therefore justify

international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States.

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

In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

4. Under international human rights law, provisional measures are not merely preventive, in that they preserve a juridical situation, but rather they are essentially protective, since they protect human rights, inasmuch as they seek to avoid irreparable damage to persons. The measures are applicable provided that the basic requirements of extreme gravity and urgency and the prevention of irreparable damage are present. In this way, provisional measures become a real jurisdictional guarantee of a preventive nature.¹

5. In this matter, on several occasions the State has asked that the provisional measures be lifted. Before the Court can determine whether it is necessary to maintain these measures, it must examine how these measures are being implemented. As the Court has indicated in other orders issued in this matter (*supra* having seen paragraph 1), based on its competence, in the context of provisional measures, the Court may consider only and strictly those arguments that are directly related to the extreme gravity, urgency and need to avoid irreparable damage to persons. Any other fact or argument may only be analyzed and decided during the consideration of the merits of a contentious case.² Consequently, in this matter, it is not incumbent on the Court to take into account information related to presumed acts perpetrated outside the humanitarian zones of Nueva Esperanza, Pueblo Nuevo, Caño Claro and El Tesoro, and the five biodiversity zones known Erasmo Sierra, Enrique Petro, Familia Tuberquia, Ligia María Chaverra and Efrén Romaña, whose members are beneficiaries of these provisional measures, or to acts that prejudice individuals who are not protected by these measures.³

¹ Cf. *Case of the "La Nación" newspaper*. Provisional measures with regard to Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, fourth considering paragraph, and *Matter of Castro Rodríguez*. Provisional measures with regard to México. Order of the Inter-American Court of Human Rights of February 13, 2013, fifth considering paragraph.

² Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 29, 1998, and *Matter of Castro Rodríguez*. Provisional measures with regard to México. Order of the Inter-American Court of Human Rights of February 13, 2013, sixth considering paragraph.

³ The Court will not take into account the following incidents presented by the representatives:

a. On April 3, 2011, "an attack had been thwarted against the member of the lower council of Caño Manso, Santander Nisperusa," who had "expressed his concern owing to the existence of a list containing the names of individuals who were to be executed in the hands of paramilitaries.

b. In a document attached to the brief of April 15, 2011, they provided information on 46 incidents of alleged threats, intimidation and damage to property that had presumably been perpetrated by "occupants in bad faith" and "paramilitaries" between February 12 and April 8, 2011, and were presumably related to the adoption of these provisional measures. According to the representatives of the beneficiaries, "[s]ince the well-known paramilitary operations occurred on April 8, [2011, they were] unaware of no effective operations to protect the life and integrity of the Afro-Colombians [...] who inhabit the humanitarian zones and the biodiversity zones in the Curvaradó and Jiguamiandó."

c. On April 15, 2011, they reported a presumed "occupation of collective lands [by] a group [...] of paramilitaries in civilian clothing bearing rifles." They also indicated that around this time, "the soldiers [...] withdrew from the places on the perimeter of the humanitarian zones and the biodiversity zones where they had established a presence and where those who are claiming Curvaradó and Jiguamiandó lands are located."

A. Adoption, forthwith, of all necessary measures to protect the life and personal integrity of the members of the communities constituted by the Community Council of the Jiguamiandó and the families of the Curvaradó beneficiaries of these provisional measures

A.1. Information provided by the State

d. On May 9, 2011, they reported eight incidents of alleged threats, intimidation and the sacking of homes and crops, presumably perpetrated by paramilitaries between April 17 and 25, 2011.

e. On August 2, 2011, they reported the “forced disappearance of Everto González, member of the lower council of Caracolí, attached to the [Caracolí] humanitarian zone.” The supposed facts were presumably perpetrated by “paramilitaries on [...] July 23, 2011.” The representatives also reported presumed death threats and threats of forced recruitment against the inhabitants of the communities. According to the representatives, “[t]he cases denounced [...] made the [forced] displacement necessary of two families [...] members of the lower councils of Curvaradó”.

f. On August 8, 2011, they reported the forced disappearance of Francisco Pineda, “member of a voluntary council, inhabitant of Caracolí,” who was presumably attacked by paramilitaries on August 1, 2011. According to the information provided by the representatives, “[t]he paramilitaries took him in order to settle a matter relating to land” and, since then, no one knows his whereabouts. They also reported “threats, and plans to execute members of the lower councils” and the presence of paramilitaries in the “Jiguamiandó and Curvaradó river basins,” added to the “failure of the members of the security forces to protect the life and personal integrity of the inhabitants of the humanitarian zones.”

g. In documentation attached to the brief of August 8, 2011, they provided information on 19 incidents related to presumed threats, intimidation, paramilitary presence, occupation of collective territories, and forced displacement that prejudiced inhabitants of the communities of Jiguamiandó and Curvaradó. These acts were perpetrated between July 6 and August 31, 2011.

h. On August 29, 2011, they advised that, the previous day, two bodies had been found “in front of the humanitarian zone of Caño Claro Andalucía in Curvaradó.” According to the representatives, the alleged executions had been carried out by presumed paramilitaries. In addition, the representatives indicated that, at that date, “more than 31 of the individuals who were claiming land had received death threats.”

i. On October 10, 2011, they reported the “murder of the indigenous person, Jhon Jairo Domicó, in the collective territory of the Curvaradó.” According to the representatives, the “member of the Embera indigenous people had been murdered by [presumed] paramilitaries.” They also reported eight incidents of “paramilitary presence [...] threats [...] economic blockade [...] and] failure to respect humanitarian areas exclusive to the civilian population,” in the Curvaradó and Jiguamiandó river basins.

j. On February 17, 2012, they forwarded information on “the persistence of paramilitaries in the basins of the Curvaradó and Jiguamiandó Rivers [...], the] threats and accusations against leaders who inhabited the humanitarian zones [...], the] continuation of the smear campaigns in the media against Ligia María Chaverra [... and the] persistence of illegal crops in the territory.”

k. On May 22, 2012, they provided information on the presumed “forced disappearance and murder” of the land restitution leader of the community of Apartadocito, Manuel Ruiz and of his son, Samir de Jesús Ruiz, which had taken place between March 23 and 27, 2012, as well as the forced displacement of his family.

l. Also, on October 16, 2012 the representatives indicated that, during the “processing of these [provisional] measures, owing to the order to restitute lands issued by the Constitutional Court of Colombia, death threats had been proffered against [...] Pedro Cortés [and] Eliécer Ramos[, ...] from the humanitarian zone of Andalucía Caño Claro; Raúl Palacios Salas, Sixta Tulía Pérez, Blanca Rebolledo, Liria Rosa García, Edwin Martínez, and Mario Castaño, from the humanitarian zone of Caracolí; [...] Leydis Tuirán, Noemi Mesa, Nancy Sierra, Santander Nisperusa, Alfonso Saya, Dalida Sánchez, Andrés Lance, Paola Lance, Miguel Mercado, Silvio Mercado, Edgar De Jesús Ricardo and Andrés Medrano[,] from the humanitarian zone of Caño Manso; Nevys Yanes, Luis Durango, [...] David Recuero, William Plazas, James Tovar and Franklin Yañez, from the El Tesoro humanitarian zone; [...] Eustaquio Polo, [...] Miguel Hoyos, José Francisco Rosario and Euclides Trejos, from the Camelias humanitarian zone; Enrique Cabezas from the Lower Council of Apartadocito, Guillermo Díaz from the Argénito Díaz humanitarian zone, Ubert Alvarado from the Jiguamiandó river basin, Marta Martínez from the Lower Council of Caño Manso, and Oliver Blanco, among others.”

m. On May 6, 2013, they reported alleged threats to the life and personal integrity of Enrique Cabezas and Guillermo Díaz, leaders from the area, and forwarded the report entitled “*Caracterización jurídica y saneamiento de los territorios colectivos de Curvaradó and Jiguamiandó*” [Legal status and regularization of the collective territories of Curvaradó and Jiguamiandó], prepared by the Colombian Rural Development Institute (INCODER) on July 12, 2012, regarding the illegal occupation of the territories of Jiguamiandó and Curvaradó.

6. The State indicated that the “Afro-Colombian communities [...] enjoy] special protection,” and this obliges the State to respect their “autonomy, integrity, dignity and culture,” as established in the Constitution and in ILO Convention 169. In particular, the State emphasized Law 1448 of June 10, 2011, which established “measures of attention, assistance and integral reparation for the victims of the internal armed conflict,” and its Decree-Law 4635 of 2011, which established the “assistance, attention, integral reparation, and restitution of lands to the victims belonging to the Black, Afro-Colombian, Raizal and Palenquero communities.” In addition, it reiterated that the Government agencies responsible for guaranteeing security and implementing the measures of protection in favor of the beneficiaries are the 17th Brigade of the National Army and the Urabá Police Department, which have jurisdiction in the area and provide perimeter security to the communities. It also stressed the work of the Protection Program headed by the former “Ministry of the Interior and Justice,” and the Risks and Risk Assessment Committee (CRER) that, pursuant to Decree 1740 of 2010 was the entity responsible for recommending the measures of protection that it considered pertinent in each case, and their duration. However, following Decree 4912 of 2011, it was the Committee for the Assessment of Risk and Recommendation of Measures (CERREM) of the National Protection Unit, attached to the Ministry of the Interior,⁴ that was in charge of evaluating and implementing the measures in favor of the beneficiaries. Among other agencies and programs that had been assigned to implement the measures of protection, the State emphasized the Protection Unit created by Decree 4065 of 2011, as well as the Presidential Human Rights and International Humanitarian Law Program.

7. Furthermore, the State advised that, in February and October 2011, the former CRER met and formulated individual measures of protection in favor of several beneficiaries of the provisional measures, including: Manuel Denis Blandón, Uriel Tuberquia and Luis Alberto Rentería. In addition, it underlined that other measures of an individual nature had been implemented in favor of Ligia María Chaverra, Enrique Petro Hernández, and other beneficiaries from the communities of the Jiguamiandó and Curvaradó⁵ who live in the humanitarian and biodiversity zones that are the object of these provisional measures. The State indicated that the measures implemented in favor of the beneficiaries⁶ include support for transportation, mobile and satellite telephones, national airfares, motorcycles, outboard motor boats, bulletproof vests, and a collective protection plan. These measures have been

⁴ The State indicated that, currently, the entity responsible for the “formulation, adoption, leadership, coordination and execution of public policy, plans, programs and projects in the area of human rights” is the Ministry of the Interior, under the powers granted by Decree 2893 (2011).

⁵ Luis Manuel Barba, Benjamín Sierra, Efrén Romaña Cuesta, Manuel Esteban Tapias, Adriana María Tuberquia Tuberquia, Franklin Yáñez Licon, Nevis Antonio Yáñez Ortiz, Pedro Cortes Fabra, Sergio Emerito Díaz Gonzalez, Sofanor Enrique Garavito Mercado, Liria Rosa García Giraldo, Luis Ovidio Rentería Robledo, Alfonso Salla Lara, Rafael Enrique Truaquero Tuiran, Argemiro Bailarin Bailarin, Robinson Blandón Córdoba, Emilio Cabezas Correa, Andrés Carmona Luna, Eladio Cordero Hernández, Regulo Córdoba Panneso, Segundo Cuadrado Ávila, Luis Cuñapa, Javier Antonio Delgado, Jesús María Denis Rentería, Luis Vicencio Díaz, Miguel Díaz Acosta, Guillermo Díaz Tapias, Eduardo Enrique Galván García, Meraldo López, Zenaida Edith Martínez Martínez, Belisario José Marzan Montaño, Gonzalo Mena Murillo, Pedro Negrete Pérez, Hernando Olier Pautt, Overto Osorio Beltrán, Miguel Enrique Páez Petro, Raúl Palacio Salas, Pedro Pablo Palacios Cuesta, Emilson Palacios Moreno, Luis Abraham Peñalosa Mosquera, Jorge Andrés Quinto Córdoba, Eduardo Rentería Mena, Heber Alberto Rentería Mosquera, Hernando Rentería Mosquera, Emir Eliecer Romaña Palomeque, Jaime Romaña Salinas, Luis Julio Sepúlveda, Euclides de Jesús Trejos, Ariel Urango Correa, Dawson Valoyes Moreno, Germán Marmolejo, Robinson Robledo Córdoba, Adam Quinto, Jaime Beitar, Danilo Murillo Córdoba, Omar Gamel Rentería, Inelsa Baldón, Alberto Vitalino Mosquera Zuñiga, Yasser Hold Mosquera Rentería, Eleume Narciso Ramos Ramos, José de las Mercedes Gonzales Bolaños, Victor Pitalua Urango, Mario Manuel Castaño Bravo, Luis Fernando Murillo Areiza, Fredy Benitez Pestaña, Freddy Manchego Urango, José Miguel Padilla Salgado and Emilio Enrique Cabezas Martínez.

⁶ According to the State, the National Protection Unit has implemented individual measures in favor of 73 beneficiaries of the Jiguamiandó and Curvaradó river basins.

implemented with a differentiated approach, taking into account the geographical location of the area. The State also indicated that the measures of a collective nature included the provisions of seven outboard motor boats, 70 mobile communication networks, and three satellite telephones.

8. In addition, Colombia stated that, on February 3, 2011, during the meetings to reach agreement on and monitor the provisional measures, the Ministry of Defense had reiterated that it would retain the presence of the security forces in the territory of the Jiguamiandó and the Curvaradó river basins in order to ensure the respect for and the protection of the population. Accordingly, as the State had indicated, the Army's 17th Brigade and the Río Sucio Task Force are conducting operations in the area in order "to demobilize, capture [...] or] neutralize members of illegal armed groups that are seeking to commit crimes in the area," and to provide security in order to allow the population to return. Furthermore, the State advised that "the movements of Army personnel [...] in the area respond to the Army's strategy to implement its missions and operations" and, according to the State, did not imply that it had abandoned the community. Moreover, it underlined the increase of troops in the area, from 576 men in 2011 to 756 in 2012, in order to improve and strengthen the situation of security and freedom of movement of the Jiguamiandó and Curvaradó communities, and the work of the National Police, which, through the Urabá Police Department had implemented preventive and operational measures throughout the jurisdiction.

9. Lastly, the State referred to the decisions adopted by the Constitutional Court of Colombia concerning the situation of the communities of the Jiguamiandó and of the Curvaradó. It indicated that "[g]iven the situation of extreme vulnerability of the displaced population" in the context of the armed conflict in Colombia, and having verified the grave, systematic, and massive violation of the fundamental rights of this population, the Constitutional Court had declared a state of unconstitutionality⁷ concerning the internal forced displacement in *amparo* judgment T-025 of January 22, 2004, compliance with which had been verified by different monitoring mechanisms. The Court will refer to these decisions below (*infra* considering paragraphs 49 to 56).

A.2. Observations of the representatives

10. The representatives indicated that the difficulties persist for the "authorities to provide a coordinated response to the dangerous situations faced by the beneficiaries of the provisional measures." For example, in the case of Enrique Petro, they advised that the National Protection Unit had "created numerous [obstacles] to granting the tangible measures requested by the beneficiary," including an "updated certification of the existence and legal representation of the organization" to which the beneficiary belongs. In addition, they indicated that, in May 2012, risk assessments had been conducted of several leaders, but the results have not yet been communicated, and that some measures mentioned by

⁷ "The factors evaluated by the court to define whether a state of unconstitutionality existed included the following, in particular: (i) the massive and generalized violation of various constitutional rights that affects a significant number of persons; (ii) the prolonged failure of the authorities to comply with their obligation to guarantee the rights; (iii) the adoption of unconstitutional practices, such as the incorporation of the application for *amparo* as part of the procedure to guarantee the violated right; (iv) the failure to adopt legislative, administrative or budgetary measures to avoid the violation of the rights; (v) the existence of a social problem the solution of which entails the intervention of several agencies, calls for the adoption of a complex and coordinated series of actions, and requires a level of resources that demands an important additional budgetary effort; [and] (vi) if all the persons affected by the same problem filed an application for *amparo* to obtain the protection of their rights, this would increase delays in the courts." Cf. Judgment T-025 of January 22, 2004, Constitutional Court of Colombia (provisional measures file, tome XVIII, folio 7535).

the State “have not been implemented effectively,” particularly the provision of outboard motor boats, the “intense protection scheme requested by Enrique Petro” and the land-based support. They indicated that most of the persons who the State presented as beneficiaries of the “tangible measures” were not beneficiaries of the provisional measures. Regarding the measures of a general nature, they indicated that connivance with and tolerance of the illegal armed groups by the civil and military authorities continues. In addition, they considered that the information forwarded by the State merely described general activities undertaken by the security forces, but failed to specify the real impact that they have had as regards protection.

A.3. Observations of the Inter-American Commission

11. The Commission took note of the efforts described by the State to comply with the obligation of protection. However, it noted that no mention was made of the effectiveness and the specific and immediate impact of these measures for the beneficiaries, and that it had not provided information on differentiated measures to respond to the situation of extreme risk. Furthermore, it took note “that the State ‘in good faith’ had approved measures of protection in favor of 14 persons,” underscoring that three of these had been the object of a request for expansion of provisional measures rejected by the Court. Nevertheless, it indicated that the “State had acknowledged at a public hearing that the situation of the Jiguamiandó and the Curvaradó river basins is one of constant danger, which has warranted the perimeter protection of the inhabitants of the humanitarian and biodiversity zones,” but that the State did not have “sufficient troops available to respond to serious situations in the area.” According to the Commission, the information provided reveals that acts continue to be perpetrated without the State having taken sufficient measures to protect the beneficiaries. The Commission added that although the State “has taken some measures to provide protection to the beneficiaries, [...] these have not been effective, [and] far from demonstrating that it has overcome the situation of extreme gravity and urgency,” it continues to fail to provide an effective response to the situation.

A.4. Considerations of the Inter-American Court

12. The State has reiterated that it continues to adopt measures of protection in favor of the beneficiaries of the provisional measures. However, according to the information presented by the Commission and the representatives, significant elements of risk persist in the area where these persons reside.

13. While processing these provisional measures, the Court has previously indicated that, in order to ensure that the rights recognized in the American Convention are effective, the State Parte has the obligation, *erga omnes*, to protect all persons subject to its jurisdiction. In the Court’s opinion, this general obligation is binding not only in relation to the power of the State, but also in relation to actions of private third parties, including illegal armed groups of any nature.⁸ Without prejudice to the findings that follow (*infra* considering paragraphs 45 to 56), in all circumstances, the State must adopt the individual and collective measures that are necessary to protect the life and integrity of the members of the humanitarian zones of Nueva Esperanza, Pueblo Nuevo, Caño Claro and El Tesoro, and the five biodiversity zones known as Erasmo Sierra, Enrique Petro, Familia Tuberquia, Ligia María Chaverra and Efrén Romaña, taking into account their specific situation.

⁸ Cf. *Matter of Castro Rodríguez. Provisional measures with regard to Mexico*. Order of the Inter-American Court of Human Rights of February 13, 2013, fifteenth considering paragraph, and *Case of the Peace Community of San José de Apartadó. Provisional measures with regard to Colombia*. Order of the Inter-American Court of Human Rights of June 18, 2002, twelfth considering paragraph.

B. Establishment of a continuous monitoring and permanent communication mechanism in the so-called “humanitarian zones”

B.1. Information provided by the State

14. The State emphasized that one of the mechanisms it has implemented in order to ensure the adequate protection of the beneficiaries “has been the permanent link established by the Presidential Human Rights Program” with the representatives and, in general, with the members of the communities of the Jiguamiandó and of the Curvaradó, which allows the State to be informed of the requests for protection and of emergencies. According to the State, this mechanism has been acknowledged by the beneficiaries and the representatives, so that “it can be considered an effective, suitable and expeditious mechanism to deal with possible threats.” The above-mentioned Program works on the elaboration and coordination of public policies in the area of human rights and international humanitarian law, and facilitates the actions of different government entities. Its main objective is to improve the levels of respect, protection and guarantee of human rights and the application of international humanitarian law. In addition, the State indicated that, within the framework of compliance with the orders of the Constitutional Court, specifically with the adoption of the Integral Prevention and Attention Plan, other local and national institutions had been incorporated such as the Governor’s Office of the department of El Chocó, the Ministry of Agriculture, and INCODER (the Colombian Rural Development Institute).

B.2. Observations of the representatives

15. The representatives considered that there is no effective verification mechanism to evaluate the responsiveness of the local, military and civil authorities when performing their task of protecting the rights of the beneficiaries of the provisional measures, and responding to situations of extreme gravity and urgency. In addition, they stressed the ineffectiveness of the Protection Program of the former Ministry of the Interior and Justice to respond opportunely to the beneficiaries’ requests for protection, arguing that the program has serious shortcomings which mean that the beneficiaries “do not receive opportune and effective attention when facing situations of risk” that warrant a response. In addition, they indicated that, in view of “the grave situation of risk,” the members of the lower councils of the Curvaradó and Jiguamiandó river basins had forwarded the Government an integral protection plan in which they requested individual and collective measures of protection for 48 leaders who were under threat, and urged that they be implemented rapidly and effectively. However, according to the representatives, they have not received an answer. Nevertheless, the representatives indicated that, on July 21, 2011, a meeting had been held with the participation of the Ministry of Foreign Affairs, and delegates from the Ombudsman’s Office, the Ministry of the Interior, and the Presidential Human Rights Program, during which the representatives proposed the creation of a committee to monitor the beneficiaries’ situation of risk.

B.3. Observations of the Inter-American Commission

16. The Commission indicated that the State had not commented on the integral protection plan that the members of the lower councils of the Curvaradó and Jiguamiandó river basins had forwarded to the Government, and therefore recalled the importance of the mechanism for concertation between the State, the beneficiaries and their representatives.

B.4. Considerations of the Inter-American Court

17. The Court observes that there is a discrepancy between the information presented by the State and the observations of the representatives on this point. However, it also notes that, above all, both the State and the Inter-American Commission refer, in general, to the members of the communities of the Curvaradó and the Jiguamiandó, and not to the members of the humanitarian zones of Nueva Esperanza, Pueblo Nuevo, Caño Claro and El Tesoro, and of the five biodiversity zones known as Erasmo Sierra, Enrique Petro, Familia Tuberquia, Ligia María Chaverra and Efrén Romaña. For their part, the representatives stressed that they had proposed to the State an integral protection plan for the beneficiaries but that to date they have not received an answer. In this regard, notwithstanding the following findings in this Order (*infra* considering paragraphs 45 to 56), the Court reiterates that the State must, in all circumstances, adopt the necessary individual and collective measures to protect the life and integrity of the members of the said humanitarian and biodiversity zones (*supra* considering paragraph 13).

C. Participation of the representatives designated by the beneficiaries of these measures in the planning and implementation of the measures and that, in general, the State keep them informed of progress in the measures ordered by the Inter-American Court of Human Rights

C.1. Information provided by the State

18. The State indicated that, in recent years, in the process of implementing these provisional measures, various monitoring and concertation meeting had been held during which the representatives and the beneficiaries had presented isolated requests, concerns and other observations that had been heard by each entity responsible for implementing the provisional measures. In this regard, the State advised that, on August 23, 2012, at the request of the representatives, a meeting had been held “[s]o that the State could monitor [...] the provisional measures ordered by the Inter-American Court [...].” According to the State, the meeting was attended by officials from the Ministry of Foreign Affairs, the Ombudsman’s Office, the Prosecutor General’s Office, the Ministry of the Interior, the Presidential Human Rights Program, the Attorney General’s Office, the Ministry of Defense, the National Police and the Special Administrative Unit for Attention and Integral Reparation to Victims. In addition, the State underlined that the individual measures of protection had been agreed upon with each of the beneficiaries in the communities, taking into account a differentiated approach and the geographical location of the area.

C.2. Observations of the representatives

19. The representatives indicated that, on March 11, 2011, they had given the director of the Protection Unit, a list of 49 persons from the communities of Curvaradó and Jiguamiandó who were at “extreme risk,” including: Manuel Denis Blandón, Melkis Romaña, Romualdo Salcedo, Enrique Petro, Pedro Cortés, Benjamín Sierra, Erasmo Sierra, Manuel Santana, Cristóbal Reyes, Atanael Martínez, María Ligia Chaverra, Uriel Tuberquia and Adriana Tuberquia. In this regard, they indicated that the Protection Unit had “conducted the risk assessments, the results [of which] had not been announced; according to the Unit, because of safety protocols.” They also indicated that, on February 5, 2013, the director of the Human Rights Unit of the Ministry of the Interior had met with Enrique Petro, two members of the Ruíz Gallo family, and three representatives of the beneficiaries.

C.3. Observations of the Inter-American Commission

20. The Commission underlined that no meetings had been held since February 2012,

and therefore recalled the importance of the mechanisms for concertation between the State, the beneficiaries and their representatives, and that any measure of protection must be based on the circumstances and needs of the beneficiaries.

C.4. Considerations of the Inter-American Court

21. On this point, there are also differences between the information presented by the representatives, the State and the Inter-American Commission, which make it difficult to monitor its implementation. Without prejudice to the following findings (*infra* considering paragraphs 45 to 56), the Court urges the representatives and the State to continue making every effort to respond to the situation and the needs of the members of the humanitarian zones of Nueva Esperanza, Pueblo Nuevo, Caño Claro and El Tesoro, and of the five biodiversity zones known as Erasmo Sierra, Enrique Petro, Familia Tuberquia, Ligia María Chaverra and Efrén Romaña.⁹

D. New facts alleged by the representatives of the beneficiaries and the Inter-American Commission

D.1. Information provided by the representatives

22. The representatives referred to the presence of supposed paramilitaries who continue acting with the acquiescence of the Army and the Police authorities; to presumed encroachments on the biodiversity zones and plantations of the members of the humanitarian zones perpetrated by presumed illegal occupants and paramilitaries, and to supposed threats and harassment of leaders during the restitution process. In this regard, the representatives indicated that, on November 6, 2011, the leader María Ligia Chaverra, beneficiary of these provisional measures, had "received renewed threats from an illegal occupant." In addition, they indicated that, on November 12 that year, presumed "paramilitaries of the 'Águilas Negras' were making inquiries about a community leader" Benjamín Sierra, member of the community council of Nueva Esperanza. Also, on October 16, 2012, they indicated that during the "processing of these [provisional] measures, as a result of the order to restitute land issued by the Constitutional Court of Colombia, the following had received death threats: Manuel Denis Blandón, Melkis Romaña and Romualdo Salcedo of the humanitarian zone of Pueblo Nuevo; Enrique Petro [...] and Elías López of the humanitarian zone of Andalucía Caño Claro; [...] Benjamín Sierra, Erasmo Sierra, Manuela Santana and Cristóbal Reyes of the humanitarian zone of Nueva Esperanza; [...] Atanael Martínez, [...] of the humanitarian zone of El Tesoro; María Ligia Chaverra, [and ...] Uriel Tuberquia and Adriana Tuberquia [...] of the humanitarian zone of Camelias."

D.2. Observations of the Inter-American Commission

23. The Commission reiterated the facts presented by the representatives (*supra* considering paragraph 22). Among other elements, it gave particular emphasis to the alleged presence of paramilitaries in the collective territories of the Jiguamiandó and of the Curvaradó; the withdrawal of the perimeter protection of the humanitarian and biodiversity zones; the disappearance of a persons from the zone and the presumed forced displacement of his family, supposedly attributable to the actions of the said groups; the death threats and harassment of leaders during the process of land restitution, as well as the supposed presence of armed civilian structures and business people involved in growing

⁹ Cf. *Matter of the Kankuamo Indigenous People*. Provisional measures. Order of the Inter-American Court of Human Rights of November 21, 2011, twenty-seventh considering paragraph.

African palm who have plantations in the collective territories of the communities, and the growing control exercised by these groups in the region.

D.3. Observations of the State

24. The State indicated that, within the framework of compliance with its general obligations, it was implementing all the actions available to it to ensure the rights of the communities of Jiguamiandó and of Curvaradó in relation to their collective territory. In particular, as regards “the withdrawal of the military personnel from the area” and the presumed abandonment in which this situation left the beneficiaries of these measures, it recalled that these “arrangements change, always remaining near to and around the communities.” Regarding the presumed surveillance of Enrique Petro, the State indicated that the “National Army is near his home, providing the perimeter protection required and agreed upon.” In relation to the alleged “presence of paramilitary groups in the area ‘protected by the security forces,’” the State reiterated its commitment to “eradicate all the illegal groups that are committing acts of violence, including the emerging bands that are involved in drug-trafficking.” In this regard, it referred to the operations of the Army and of the National Police aimed at “guaranteeing the physical safety of the communities and territories of the Jiguamiandó and the Curvaradó river basins.” Lastly, regarding the alleged abuses by business people and illegal occupants who refuse to restitute land, the State indicated that the Prosecutor General’s Office was conducting several investigations into the crimes of threats, land usurpation, and conspiracy to commit crime related to the inhabitants of the areas of the Jiguamiandó and of the Curvaradó. In particular, it stressed that the Quibdó Sectional Prosecution Directorate “had filed 26 cases before the courts based on criminal conduct perpetrated against members of the communities beneficiaries of these provisional measures”.

D.4. Considerations of the Inter-American Court

25. The Court observes that the State has not contested the facts presented by the representatives and, in this regard, referred to the measures it has adopted to respond to the said situations. Consequently, the Court reiterates that Article 1(1) of the Convention establishes the general obligations of States Parties to respect the rights and freedoms recognized therein and to ensure their free and full exercise to all persons subject to their jurisdiction, under any circumstances. The State is especially obliged to ensure the rights of the members of the humanitarian zones of Nueva Esperanza, Pueblo Nuevo, Caño Claro and El Tesoro, and of the five biodiversity zones known as Erasmo Sierra, Enrique Petro, Familia Tuberquia, Ligia María Chaverra and Efrén Romaña.

E. Request to lift the provisional measures

26. As already mentioned in this Order (*supra* having seen paragraph 4), on several occasions the State has requested the lifting of the provisional measures ordered in this matter. Colombia has argued that the obligation to guarantee human rights signifies that the State, in exercise of its sovereign domestic powers, is the first authority that must draw on all its institutions to protect the rights of the persons subject to its jurisdiction. Therefore, it indicated that the protection ensured by the inter-American system for the protection of human rights is of a reinforcing and complementary nature, pursuant to the Preamble to the American Convention on Human Rights. The State indicated that, from the procedural perspective of the principle of subsidiarity, “the jurisdictional intervention that justifies [the] special mechanism of protection [represented by the provisional measures], is subject to either a lack of action by the State concerned in cases of extreme gravity and

urgency, or a State response that is not in keeping with the appropriate response required to this type of situation.”

27. Therefore, Colombia argued that the monitoring of the special situation of the communities of the Jiguamiandó and of the Curvaradó is a result of a legal and constitutional mandate derived from compliance with both the orders of the Constitutional Court (*infra* considering paragraphs 36 and 37), the highest constitutional court of the State, and the Inter-American Court. Consequently, it indicated that the actions taken based on the decisions of the Constitutional Court concur with the mandate of protection established by the Inter-American Court by means of these provisional measures and that, to a certain extent, those actions exceed the sphere and nature of the said mechanism, because they cover not only the right to life and integrity of the members of the communities of the Jiguamiandó and of the Curvaradó, but they also affect rights such as to property, to participation, and to prior consultation.

28. In view of the above, the State considered that, in this matter, based on the principle of subsidiarity, the provisional measures should be lifted because it had demonstrated that, at the domestic level, there were mechanisms to coordinate and implement measures of protection in favor of the members of the communities of the Jiguamiandó and of the Curvaradó, including those who are beneficiaries of the provisional measures.

29. In this regard, on the instruction of the Court in plenary, on July 4, 2012, the State was asked to present detailed information on various aspects and, subsequently, the Inter-American Commission and the representatives of the beneficiaries were asked to submit their observations (*supra* having seen paragraph 7). Based on the said information and observations (*infra* considering paragraphs 30 to 44), the Court will rule on the State's request that the measures be lifted. To this end, the Court finds it useful to refer, separately, to each of the aspects on which the Court asked Colombia to provide information. It will then refer to the observations of the Inter-American Commission and of the representatives of the beneficiaries.

E.1. Information provided by the State

E.1.1. Existence of measures of protection ordered by national and international instances in favor of the beneficiaries of the provisional measures

30. Specifically, the State indicated that it had put in place protection measures by means of public policies implemented by different government agencies aimed at improving and resolving the situation of the displaced population in general, including the communities of Afro-descendants and, in particular, the members of the communities of the Jiguamiandó and of the Curvaradó. These public policies derive from Decree Law 4635 of 2011, which “ordered measures of attention, assistance, [...] integral reparation, [...] and land restitution to the victims belonging to Black, Afro-Colombian, Raizal and Palenquero communities,” and which is regulated by Law 1448 of June 10, 2011, entitled “Victims and Land Restitution Act.” Decree Law 4635 mentions the adoption of “special measures of protection for the rights to life, security, freedom and integrity for the communities in a situation of special or extreme risk.” In this way, “the competent authorities [must adopt], by the formulation of the national protection program, differentiated individual and collective measures of comprehensive protection of an ethnic, age- and gender-based nature, according to the level of risk assessed in each case,” when the communities or their members are “threatened with human rights violations and infringements of international humanitarian law.” In addition, the public policies also related to Law 70 of 1993, under which the State

"implemented transitory article 55 of the Constitution, which granted the Black communities that were occupying wastelands in the rural areas on the banks of the rivers of the Pacific watershed, as well as in other areas of the country with similar conditions, the right to collective ownership of these lands," among other matters.

31. In addition, the State referred to the decisions handed down by the Constitutional Court of Colombia from which are derived, on the one hand, the implementation of the special measures of protection in favor of the members of the communities of Jiguamiandó and Curvaradó, among other communities and, on the other hand, the supervision of implementation. These decisions are: (1) Judgment T-025 of 2004, by which the Constitutional Court declared the "existence of a state of unconstitutionality in relation to the situation of the internally displaced population"; (2) Decision 005 of 2009 relating to the "protection of the fundamental rights of the Afro-descendant population, victim of forced displacement"; (3) the Decision of May 18, 2010, adopting "preventive measures of immediate protection to safeguard the fundamental rights of the Afro-Colombian communities of Curvaradó and Jiguamiandó"; (4) Decision 384 of 2010 concerning "compliance with the Decision of May 18, 2010"; (5) Decision 045/12 of March 7, 2012, regarding different requests made by the Ministry of the Interior in relation to orders arising from the previous decisions, and (6) Decision 112 of May 18, 2012, by which the Constitutional Court evaluated the implementation of the "Urgent Provisional Plan for the Prevention of Displacement, and Individual and Collective Protection in the Curvaradó and Jiguamiandó [*sic*] River Basins," among other matters, in compliance with the orders issued in the said Decision 045/12. In its brief of February 5, 2013 (*supra* having seen paragraph 4), the State referred to Decision 299 of December 18, 2012, forwarded to the Court by the Inter-American Commission (*supra* having seen paragraph 6), concerning, among other matters, the "evaluation of the orders given in the decisions of May 18, 2010, and A045 and 112 of 2012." The Court will refer below to these decision (*infra* considering paragraphs 49 to 56). In this regard, Colombian also indicated that, in these matters, the Government periodically submits monitoring and compliance reports to the Constitutional Court on "the actions taken and mechanisms created to comply with each decision, indicating the entities involved and the respective status of compliance [...]."

32. Lastly, the State indicated that, even if the present provisional measures are annulled, based on the provisions of Article 1(1) of the American Convention, as well as on the obligations imposed by domestic laws and the Constitutional Court, it will continue responding to the needs for protection of the members of the communities of the Jiguamiandó and of the Curvaradó.

E.1.2. Government authorities or entities responsible for the protection of the beneficiaries of the provisional measures and of other inhabitants of the communities of the Jiguamiandó and of the Curvaradó, and their respective competences in this regard

33. The State mentioned different government entities assigned to the implementation and supervision of the measures of protection ordered in Colombia, as well as the provisional measures ordered by this Court:

- 1) Ministry of the Interior: "all the institutional procedures to coordinate the actions aimed at the protection of the human rights of the members of the communities of the Jiguamiandó and Curvaradó" are implemented through the Human Rights Directorate and the Directorate for the Affairs of the Black, Afro-Colombian, Raizal, and Palenquero Communities. In addition, the National Protection Unit has assumed the safeguard of the beneficiaries of these provisional measures. This Unit is the Technical Secretariat of the

Committee for Risk Assessment and Recommendation of Measures, the purpose of which is “the comprehensive assessment of the risk [and] the recommendation of measures of protection and complementary measures.”

2) Ministry of Defense: through the National Police and the 17th Brigade of the National Army, which have permanent jurisdiction in the area that includes the communities of the Jiguamiandó and of the Curvaradó, and which provide them with perimeter security.

3) Presidential Human Rights and International Humanitarian Law Program: is responsible for the official communication channel with the civil, military and police authorities in the area, responding to the situations of risk that are reported to it through the liaison mechanism established with the members of the communities of Jiguamiandó and Curvaradó, the *Comisión Intereclesial de Justicia and Paz*, as representative of the beneficiaries of these provisional measures, and the Ombudsman’s Office, among others, “in order to request verification of the incidents denounced and the adoption of the pertinent measures by the competent authorities, providing an immediate response, in real time, to the situation reported [...]”

4) Other agencies: in the context of compliance with the decisions of the Constitutional Court, particularly in relation to the “elaboration of the Comprehensive Prevention, Protection and Attention Plan,” other State authorities and entities have also been involved; they include the Governor’s Office of the department of Chocó and the respective municipal authorities, the Administrative Department for Social Prosperity, through the Unit for Attention to and Integral Reparation of Victims, and the Ministry of Agriculture-INCODER.

E.1.3. Mechanism for coordinating the different Government authorities and agencies

34. The State indicated that the Ministry of the Interior was in charge of coordinating the respective entities responsible for complying with the decisions handed down by the Constitutional Court with regard to the communities of the Jiguamiandó and of the Curvaradó. The State underlined that this Ministry heads the Inter-institutional Support Group for the Land Restitution Process in the Curvaradó and Jiguamiandó River Basins, established on June 6, 2012, which is composed of different State entities “involved in the process and in the opportune and adequate institutional response to the communities.” This mechanism has the international support of the United Nations High Commissioner for Refugees (UNHCR), among others, which conducts an ongoing evaluation of compliance with the orders of the Constitutional Court, monitors the implementation of the proposed work plan, and adjusts and evaluates compliance with the Prevention and Protection Plan, as well as with the strategies for the institutional response to the decisions of the Constitutional Court. The State also indicated that the Ministry of Foreign Affairs, through its Human Rights and International Humanitarian Law Directorate, carries out the institutional coordination of the monitoring and concertation of the provisional measures ordered by the Inter-American Court.

E.1.4. Individual and collective measures of protection adopted

35. Colombia indicated that, the collective measures implemented include the provision of: (1) seven outboard motor boats; (2) 70 mobile communication networks; (3) 33 satellite communication antennas, and (4) three satellite telephones. It also mentioned that it had implemented individual measures in favor of 73 “beneficiaries from the Jiguamiandó and Curvaradó river basins,” and listed their names. These measures included: (1) support for

transportation; (2) mobile telephones; (3) national airfares; (4) satellite telephones; (5) outboard motor boats; (6) horses; (7) motorcycles; (8) relocation support; (9) bulletproof vests, and (10) individual escort plans. The State indicated that these measures had been “agreed upon with each of the beneficiaries in the communities, based on a differentiated approach and the geographical location of the area.” The State also referred to the measures of security provided in the area by the 17th Brigade of the National Army and the National Police.

E.1.5. Measures of protection, both individual and collective, ordered by the Constitutional Court of Colombia, the beneficiaries they cover, and the mechanism to monitor compliance with these measures

36. Regarding the orders issued by the Constitutional Court of Colombia, the State reported that:

1) By the Decision of May 18, 2010, it ordered: (a) the adoption of a specific collective and individual prevention and protection plan for the Afro-descendant population and communities of the Jiguamiandó and Curvaradó river basins, “which takes into account the evolution and recent worsening of the situation of public order and of the vulnerability of these communities,” and that, “on a permanent basis, specific measures be included to prevent displacement and to ensure security and the collective and individual protection of the rights to life, personal integrity, freedom of movement and residence, and other fundamental rights of the members of the Afro-descendant communities of the Jiguamiandó and Curvaradó river basins,” and (b) that the necessary measures of protection be provided to the members and leaders of the said communities, particularly, Enrique Petro and María Ligia Chaverra, “informing the Ombudsman’s Office of the measures adopted so that an objective evaluation can be made of the suitability of these measures, as part of the prevention of crimes against those who are protected”;

2) By Decision 045/12, it ordered: (a) that an urgent provisional plan be drawn up for the prevention of displacement and for individual and collective protection for the communities of the Jiguamiandó and of the Curvaradó, “that provides an immediate and comprehensive response to the most urgent needs for individual and collective safety, that offers a continuing, permanent and congruent response to the difficulties they face, and that permits holding the General Assembly of the Community Councils of the Jiguamiandó and Curvaradó river basins,” and (b) that the Ministry of Defense adopt effective, permanent and sufficient measures to ensure the individual and collective safety of the inhabitants of the Jiguamiandó and Curvaradó river basins, “taking into account the assessment made in the draft prevention and protection plan presented by the Ministry of the Interior, as well as the risk reports and early warnings declared by the Ombudsman’s Office”;

3) By Decision 112 of May 18, 2012, the Constitutional Court ordered the presentation of a detailed joint report on “the measures of attention and protection adopted to date, in relation to the family of Manuel and Samir Ruiz, and of the other 49 persons displaced owing to their murder [...],” and

4) Decision 299 of December 18, 2012, “is another example of the commitment of the Government agencies to respond insofar as possible and as amply as possible to all the social problems of the community, including those that exceed the sphere of the protection of life and personal integrity [...].”

37. The State indicated that the Constitutional Court had a Special Supervisory Chamber that monitors compliance with the orders it issues in relation to the measures of protection ordered in favor of the communities of the Jiguamiandó and of the Curvaradó, among others. In addition, within the framework of the measures of protection ordered by the Constitutional Court, Colombia indicated that, at an institutional level, the Ministry of the Interior, "based on its leading role in the land restitution process," heads the design, coordination and implementation of the Comprehensive Attention, Prevention and Protection Plan, which is also "permanently supported and monitored by the State organs of control (Ombudsman's Office and Attorney General's Office) and the international community." Similarly, it indicated that it had made progress in establishing an integrated protection and prevention plan for the communities, with clear guidelines concerning risks that require attention. This plan establishes short-, medium- and long-term actions for the prevention of human rights violations, "organized by the moment of prevention (early, urgent and guarantee of non-repetition)." In addition, the Attorney General's Office had set up a special committee to support the Afro-descendant and indigenous communities of the Jiguamiandó and Curvaradó river basins, in compliance with the Decision of May 18, 2010. Lastly, the State indicated that the Head of the Urabá Police Department had prepared an action plan to respond to the provisions of the said Decision 299, in order to ensure the protection of the rights of the Afro-descendant population of the Jiguamiandó and Curvaradó river basins, with collective measures such as the provision of four launches and six communal jeeps, as well as individual measures "designed for different leaders, including Enrique Petro (protection plan) [and] Ligia María Chaverra (protection plan)."

E.1.6. Additional information that the State considered relevant

38. Colombia referred to investigations conducted by the Prosecutor General's Office. It indicated that, through the National Directorate of Prosecutors' Offices, the re-assignment had been requested of the proceedings underway for violations of the rights of members of the communities of the Jiguamiandó and of the Curvaradó, "appointing delegate prosecutors before the specialized criminal circuit judges attached to the National Human Rights and International Humanitarian Law Unit and/or the National Crimes involving Forced Displacement and Disappearance Unit," in order to implement investigation strategies that contributed to an appropriate approach to the procedures and to allow those responsible for the said violations to be brought to justice expeditiously. In addition, according to the State, the International Affairs Directorate of the Prosecutor General's Office is monitoring investigations and inquiries involving victims who are members of the communities of Jiguamiandó and Curvaradó.

E.2. Observations of the representatives

39. The representatives indicated that maintaining the provisional measures merely depended on whether the situation of extreme gravity and urgency that led to their adoption persisted, or whether new equally grave and urgent circumstances warranted maintaining them, as established by the Court. In this regard, they indicated that the reasons that justified the adoption of these provisional measures continued to be valid, as they had been informing the Court. They emphasized that this situation of extreme gravity faced by the beneficiaries "is related to the exercise of their right to the restitution of the lands from which they were forcibly displaced, and the demand for truth, justice and integral reparation." They also indicated that, even though "definition of the ownership of those rights and the State's non-compliance with its obligations in this regard are matters that exceed the sphere of the provisional measures [...], the situation of risk of the beneficiaries is related to the decision to remain on the territory and claim their rights [...]." Among the risk factors, the representatives referred in detail to: the "persistence of the

internal armed conflict"; the "persistence of the mobilization, presence and control of the paramilitary groups in the river basins where the humanitarian zones are located, as well as in areas of transit that are necessary for the [zones]"; the "continuing threats [and] harassment against the land claimant leaders"; the "illegal planting and processing of crops using the territories of the Curvaradó and Jiguamiandó river basins"; the "invasion of collective territories by illegal occupants [...]," and the "absence of a response from the authorities to the protection plan requested by the communities."

40. The representatives argued that the context of risk "continued in force even after the last hearing" in this matter; that this situation had been examined by the Constitutional Court of Colombia, and that the effectiveness of the measures should be analyzed based on the possibility that the beneficiaries can continue living in the humanitarian zones and biodiversity zones, exercising their rights, without suffering irreparable damage to their life and integrity as a result of this. In their brief of February 6, 2013 (*supra* having seen paragraph 5), the representatives indicated that, even though "progress has been made in the Government's response aimed at facilitating legal restitution of the territories, [...] the risk factors remain; [that ...] the specific response of the 17th Brigade to the perimeter control has had serious shortcomings; [and that the ...] response of the Protection Unit to the requests for collective plans corresponding to the identity of the Afro-descendant ethnic group has not received an adequate response [...]." Based on the foregoing, the representatives asked the Court to maintain the provisional measures in force; that it order the State to adopt the necessary measures to protect the life and integrity of the beneficiaries, and that "it visit the humanitarian zones, beneficiaries de provisional measures, in order to verify the situation of risk [...]."

E.3. Observations of the Inter-American Commission

41. The Commission appreciated the information presented by the State, "and also the detailed analysis of the actions it had taken in relation to these measures and of the authorities involved." Nevertheless, the Commission found that, in order to lift the provisional measures, it was necessary to consider whether the elements of extreme gravity, urgency and need to avoid irreparable damage subsisted, and to analyze the "improvements adopted, and the effective response in order to overcome the situation of risk that led to the adoption of the measures."

42. The Commission indicated that the information presented by the representatives revealed that, since the Order of this Court of November 25, 2011 (*supra* having seen paragraph 2) and up until July 2012, "there had been death threats against the leaders of the beneficiary communities, executions and disappearances, harassment [and] a constant paramilitary presence in the area with alleged State acquiescence, among other elements." The Commission indicated that the Inter-American Court had been made duly aware of this information. Furthermore, it stressed that the State itself had acknowledged the situation that subsisted in the area and that, in this regard, had referred to "the situation of the land restitution, the census that had been ordered, the displacement, the presence of the so-called BACRIM [Emerging Criminal Bands] [supposedly identified as paramilitaries] as well as the different decisions handed down by the Constitutional Court [...]." It indicated that, during the processing of the preventive measures and the provisional measures, both the Inter-American Commission and the Court, respectively, had considered these elements, which had given rise to a situation "of extreme gravity, urgency and imminent risk of irreparable damage in the communities of the Jiguamiandó and of the Curvaradó."

43. According to the Commission, "the alleged threats, surveillance and harassment which the members of the beneficiary communities have been subject to, the alleged lists of

leaders to be executed, the alleged disappearance and extrajudicial executions, [and] the alleged paramilitary presence with the State's acquiescence, among other elements, are extremely serious." In addition, regarding the extreme urgency, it indicated that "the absence of guarantees of adequate and effective measures of protection is a fundamental element to be taken into consideration." Also, it stated that the "nature of the rights that are under threat, in other words, the right to life and physical integrity of the beneficiaries, constitutes the requirement of irreparability of the consequences that maintaining the provisional measures seeks to avoid." In this regard, the Commission indicated that, although the State had taken "some measures" for the protection of the beneficiaries, these had not been effective, and that the State had not presented information that proved that the situation that gave rise to these provisional measures had been overcome. In its communication of January 25, 2013 (*supra* having seen paragraph 6), the Commission mentioned that, in Decision 299 of December 18, 2012, the Constitutional Court of Colombia had indicated that there were still security problems related to the situation of public order in the area of the communities of the Jiguamiandó and of the Curvaradó and to the "tensions relating to the restitution process," which required the adoption of preventive mechanisms. In this regard, in its brief of May 10, 2013 (*supra* having seen paragraph 6), it indicated that "the actual situation of extreme gravity and urgency [was] also demonstrated by [...] the November 2012 visit of an international verification commission, [which verified] the actions of the paramilitary groups against the communities. Lastly, the Commission took note of the information presented by the State in relation to the action plan that the Urabá Police Department had prepared, but considered that the "information presented, without the respective documentary support, [was] insufficient to show that the situation of extreme gravity and danger of the beneficiaries of the measures had been surmounted."

44. In conclusion, the Commission found that it was not sufficient that the State had taken certain measures; rather these had to be effective to respond to the situation of extreme gravity, risk and irreparability of the damage. In this regard, from the information presented during the processing of these provisional measures, as well as from the consideration of the Constitutional Court of Colombia, the Commission considered that the provisional measures should be kept in force.

E.4. Considerations of the Inter-American Court

45. The State has requested the lifting of the provisional measures based on the principle of subsidiarity contained in the Preamble to the American Convention. It indicated that, under Colombian law and also the orders of the Constitutional Court, the State has the obligation to adopt measures of protection in favor of all the members of the communities of the Jiguamiandó and of the Curvaradó, including the beneficiaries of these provisional measures. In conclusion, the State argued that it is providing protection to the beneficiaries by means of the internal mechanisms established to this end. On the other hand, the Inter-American Commission and the representatives indicated that the validity of the provisional measures should be evaluated based on whether the risk factors that gave rise to them subsist and whether the situation of extreme gravity and urgency and the risk of irreparable damage continues, pursuant to Article 63(2) of the Convention. Both the latter concluded that, throughout the processing of the provisional measures, they had advised the Court of facts that constituted the said requirements, so that the situation of risk for the beneficiaries continued. Consequently, they considered that the provisional measures should not be lifted.

46. On several occasions the Court has established that, when ordering measures of protection, the Court's standard of assessment of these requirements is *prima facie*, and, at

times, it is necessary to apply presumptions in the face of the needs for protection.¹⁰ The Court has also indicated that, despite the foregoing, maintaining the measures of protection requires the Court to make a more rigorous assessment as regards the persistence of the situation that gave rise to them.¹¹

47. As revealed by the Orders issued previously by this Court (*supra* having seen paragraphs 1, 2 and 3), as well as this Order, elements of risk persist for the life and integrity of the inhabitants of the humanitarian zones of Nueva Esperanza, Pueblo Nuevo, Caño Claro and El Tesoro, and of the five biodiversity zones known as Erasmo Sierra, Enrique Petro, Familia Tuberquia, Ligia María Chaverra and Efrén Romaña (*supra* considering paragraph 5). This has not been contested by the State. To the contrary, the State has argued that it has adopted measures to protect the members of the communities of the Jiguamiandó and of the Curvaradó. This is also recorded in the Orders issued in this matter and in the decisions handed down by the Constitutional Court of Colombia (*supra* considering paragraphs 31, 36 and 37, and *infra* considering paragraphs 49 to 56). However, neither the Commission nor the representatives has specifically referred to the different State measures implemented, but rather they have argued, in general, that these have been neither sufficient nor effective.

48. The information presented by the State (*supra* considering paragraphs 30 to 38) reveals that different authorities, such as the Ministry of the Interior, the Ministry of Defense, the Attorney General's Office, the Ombudsman's Office, the Presidential Human Rights and International Humanitarian Law Program, and the Ministry of Foreign Affairs are carrying out the coordination, design, implementation and supervision of the measures of protection, which presumably cover all the members of the communities of the Jiguamiandó and of the Curvaradó, including the beneficiaries of the provisional measures ordered by this Court.

49. In addition, the Court underlines that both the State, and the representatives and the Inter-American Commission have indicated that the Constitutional Court of Colombia has also ordered various State agencies to respond to the situation of the communities of the Jiguamiandó and of the Curvaradó, and to implement measures of protection in their favor. Owing to their relevance, the Court will now refer to the decisions handed down by the Constitutional Court in this matter:

- 1) The case file contains a copy of Judgment T-025 of January 22, 2004, delivered by the Constitutional Court approximately one year after these provisional measures were ordered, in which, *inter alia*, it declared "the existence of a state of unconstitutionality concerning the living conditions of the internally displaced population." In this regard, it considered that "both the national and the territorial authorities, within their sphere of competence, must adopt the corrective measures that allow this situation to be rectified."

¹⁰ Cf. *Case of Raxcacó Reyes et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of August 30, 2004, tenth considering paragraph, and *Case of the Barrios Family*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of February 13, 2013, fourteenth considering paragraph.

¹¹ Cf. *Matter of the Kankuamo Indigenous People*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of April 3, 2009, seventh considering paragraph, and *Case of Gutiérrez Soler*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of October 23, 2012, fifteenth considering paragraph.

2) Subsequently, by Decision 005 of January 26, 2009, concerning the “[p]rotection of the fundamental rights of the Afro-descendant population, victim of forced displacement, in the context of the state of unconstitutionality declared in judgment T-025 of 2004,” the Second Review Chamber of the Constitutional Court declared the members of the said population to be “subject to special constitutional protection.” In this Decision, the Constitutional Court mentioned the communities of the Jiguamiandó and of the Curvaradó as “emblematic cases that reflect the gravity of the humanitarian crisis faced by the Afro-Colombian population regarding whom it is necessary adopt a specific prevention, attention, and protection plan.” The Constitutional Court stated that the provisional measures ordered by the Inter-American Court were binding and ordered compliance with them, stipulating that “[t]hese measures include the request to the Colombian State that it adopt and maintain mechanisms to protect the life and personal integrity of the members and of the families of the said communities; that it ensure to the individuals who belong to them the possibility of continuing to live in the areas where they have traditionally resided, without coercion or threat, and that it guarantee to the communities, their members and families that have been displaced, safe conditions to return to their homes.” In addition, it indicated that the Afro-Colombian communities should be beneficiaries of “specific protection and attention plans that guarantee both the collective dimension of their rights, and the rights of the individuals who are members of these communities, in the context of the policy of attention to the displaced population and of the differentiated approach.” Thus, the Constitutional Court ordered: “measures for the protection of the territorial rights of the Afro-Colombian communities,” and “measures for the protection of the rights of the Afro-Colombian communities and their members as victims of internal forced displacement and of confinement.” These measures were to be implemented by different State authorities. In addition, the Constitutional Court ordered the Ministry of the Interior and Justice, today Ministry of the Interior, and the Ministry of Defense to submit bi-monthly reports to the Ombudsman’s Office on the measures taken to comply with the provisional measures ordered by the Inter-American Court in relation to the communities of Jiguamiandó and Curvaradó.

3) By the Decision of May 18, 2010, the Special Supervisory Chamber for judgment T-025 of 2004 and the follow-up decisions of the Constitutional Court (hereinafter “Special Supervisory Chamber”) recorded the “grave situation of public order in the region where the communities of Curvaradó and Jiguamiandó are located, [which falls within the framework ...] of conditions inherent in armed conflict.” It also emphasized the grave situation of danger and of threat of these communities, and indicated that they had been subjected to “harassment, accusations and persecution, all of which make it necessary to take measures of prevention, and protection of life and personal integrity, and to counter possible new displacements.” Therefore, it ordered the adoption of “preventive measures of immediate protection to safeguard the fundamental rights of the Afro-Colombian communities of Curvaradó and Jiguamiandó, victims of forced displacement.” These measures are of both a collective and an individual nature, the latter in favor of different members and leaders of the communities.

4) By Decision 384 of December 10, 2010, the Special Supervisory Chamber granted the Ministry of the Interior an extension of the time frame for complying with the orders issued by the Decision of May 18, 2010 (*supra* considering paragraph 49.3), and ordered the Ministry to present bi-monthly reports on progress in implementing them.

5) By Decision 045 of March 7, 2012, among other matters the Special Supervisory Chamber evaluated progress in the implementation of the orders issued by Decisions 005 of 2009, May 18, 2010, and 384 of 2010 (*supra* considering paragraphs 49.2 to 49.4), related to the restitution process of the collective territory of the Afro-descendant communities of the Curvaradó and Jiguamiandó river basins. It concluded that there had been a “very severe delay in complying with the orders imparted by the Constitutional Court for the protection of the displaced and/or confined Black communities,” and that the case of “the Black communities of the Jiguamiandó and Curvaradó river basins” was emblematic because it “revealed the challenges that the national Government will face to ensure the effective restitution of collective territories and lands to the Black communities.” The Special Supervisory Chamber ordered the Ministry of the Interior, in coordination with other authorities, such as the Ministries of Defense, and of Agriculture and Rural Development, the Special Administrative Unit for Attention to and Reparation of Victims, the National Protection Unit, and other local authorities, to draw up and implement “an urgent provisional plan to prevent displacement and to provide individual and collective protection” for communities of the Jiguamiandó and of the Curvaradó; that it attend, “immediately and comprehensively, to the most urgent needs in the area of individual and collective security,” and that it offer “a response that is continuing, permanent and congruent with the difficulties they face [...].” The Ministry of the Interior was asked to report to the Constitutional Court, by April 15, 2012, at the latest, on the way in which the different State entities involved would meet their responsibilities. In addition, the Constitutional Court ordered the Prosecutor General’s Office to present a detailed report on the results of investigations into the “crime of forced displacement and related offenses in the region covered by the Curvaradó and Jiguamiandó river basins,” and to expedite the processing of the investigations that were delayed. Furthermore, it ordered that the Ministry of Defense adopt, by April 1, 2012, at the latest, “effective, pertinent and sufficient measures to ensure the individual and collective security” of the inhabitants of the said river basins.

6) In Decision 112 of May 18, 2012, the Special Supervisory Chamber analyzed the reports presented on the implementation of the “urgent provisional plan to prevent displacement and provide individual and collective protection in the Jiguamiandó and Curvaradó river basin [...],” in compliance with the provisions of Decision 045/12 (*supra* considering paragraph 49.5). In this Decision, the Constitutional Court concluded that “[t]he progress achieved to date as regards the design and implementation of preventive measures and measures of individual and collective security, as well as in coordinating efforts and overcoming shortcomings in effective coordination among all the local and national agencies concerned, remains insufficient.” In addition, it indicated that the “risk assessment and the decisions on the measures of protection do not reveal the identification and incorporation of the risks that can be anticipated in the [land] restitution process, which demonstrates the limited sensitivity of the authorities to the circumstances that give rise to the risks and directly affect those who participate in these processes.” The Special Supervisory Chamber ordered the Ministry of the Interior to present reports related to the process of land restitution to the communities of the Jiguamiandó and of the Curvaradó, among other matters.

7) Lastly, in Decision 299 of December 18, 2012, among other matters, the Special Supervisory Chamber made an assessment of the orders issued in the Decisions of May 18, 2010, 045 of March 7, 2012, and 112 of May 18, 2012. The Chamber stated, among other matters, that “the measures of security [that are adopted] must be complementary, because although there are security problems related to the situation

of public order in the region, there are others that arise from the tensions of the [land] restitution process that, in many cases, do not necessarily call for an increased military or police presence." In this regard, the Special Supervisory Chamber considered that prevention mechanisms should be adopted "to reduce the risks of accusations against or individualization of members of the community as persons who jeopardize the permanence in the territory of those who oppose the land restitution." Regarding the measures of protection for leaders of the communities of the Jiguamiandó and of the Curvaradó, the Chamber indicated that a fresh risk assessment should be made of the beneficiaries, Ligia María Chaverra and Enrique Petro, with a differentiated approach, because some of the measures adopted are no longer valid and, therefore, "their personal integrity is in danger." The Constitutional Court, through the Supervisory Chamber, ordered different State authorities to adopt measures "to protect the Afro-Colombian communities of the Curvaradó and Jiguamiandó river basis," in order "to protect [their] collective territory [...]," and others of a general nature.

50. Based on all the above, the Inter-American Court concludes that several of the elements of risk still exist that originally gave rise to the adoption of measures of protection in favor of the members of the humanitarian zones of Nueva Esperanza, Pueblo Nuevo, Caño Claro and El Tesoro, and of the five biodiversity zones known as Erasmo Sierra, Enrique Petro, Familia Tuberquia, Ligia María Chaverra and Efrén Romaña, that are the subject of this Order. Nevertheless, the Court notes that, since these provisional measures were issued approximately 10 years ago, the State has gradually and increasingly adopted numerous measures of protection, of both a specific and a structural nature, in which various local and national State authorities are involved.

51. In addition, the Court emphasizes that the situation of the communities of the Jiguamiandó and of the Curvaradó has been supervised specifically by the Constitutional Court of Colombia – in other words, by one of the highest domestic courts – for approximately four years, following the above-mentioned Decision 005 of January 26, 2009, derived from judgment T-025 of January 22, 2004. As revealed by the preceding findings (*supra* considering paragraph 49), the said court ordered the design and implementation of a protection plan for the communities of the Jiguamiandó and Curvaradó river basins, which include the humanitarian zones and biodiversity zones covered by this Order. Among other matters, the Constitutional Court ordered the adoption of both individual and collective measures of protection with a differentiated approach, in keeping with the risk assessments that were made in this regard. Furthermore, the said decisions also reveal the special attention that the Constitutional Court has accorded to these communities and to the situation that warranted the adoption of provisional measures by the Inter-American Court, even mentioning them as a paradigmatic case owing to the acts of violence which the said communities have undergone, as well as to the supposed complexity of the process of restituting their lands. In addition, compliance with the orders issued by the Constitutional Court is currently monitored by the Special Supervisory Chamber (*supra* considering paragraph 49).

52. In order to rule on the State's request to lift these provisional measures, the Court finds it pertinent to refer to the principle of subsidiarity or complementarity of the inter-American human rights system contained in the Preamble to the American Convention. Under international human rights law, this principle supposes that, in the first place, it is for the State to respect and ensure these rights within the sphere of its jurisdiction.¹² If it does

¹² Cf. E.C.H.R., *Kudła v. Poland*, Application No. 30210/96, Judgment of 26 October 2000, para. 152; E.C.H.R., *Handyside v. the United Kingdom*, Application No. 5493/72, Judgment of 7 December 1976, para. 48;

not, the international organs may intervene in a complementary manner, within their sphere of competence, in order to ensure and monitor compliance with these obligations. Therefore, the principle of subsidiarity determines the scope and the limits of the intervention of the international organs when States have not complied satisfactorily with the obligations to respect and to ensure human rights. In this way, the organs of the inter-American system may intervene in matters related to compliance with the commitments made by the States Parties to the American Convention only when these States have not complied with the said obligations, or have not done so satisfactorily. *A contrario sensu*, it corresponds to the Inter-American Commission and to this Court to abstain from intervening in these matters when the States act in accordance with their obligations to respect and to ensure human rights.

53. The Inter-American Court has established that the principle of subsidiarity crosscuts the inter-American human rights system, which, as stated in the Preamble of the American Convention, “reinforc[es] or complement[s] the protection provided by the domestic law of the American States.”¹³ Therefore, it is equally applicable in the case of the adoption of provisional measures and their maintenance, because, since it is stated in the Preamble to the American Convention, it must guide the actions of the States when it is alleged that a situation of extreme gravity and urgency exists that entails a risk of irreparable damage to the individual who is the focus of the inter-American system for the protection of human rights. Therefore, not only in contentious cases, but also in the case of the mechanism of provisional measures, the protection system established by the American Convention does not substitute the domestic jurisdictions, but complements them. The protection eventually granted by the Inter-American Court must be deployed not only if the elements indicated in Article 63(2) of the American Convention for the admissibility of provisional measures are present, but also taking into account the actions of the State within the domestic jurisdiction. Thus, although on previous occasions when it has considered it admissible to lift the provisional measures ordered, this Court has analyzed the elements mentioned in order to maintain this type of measures in Article 63(2) of the American Convention, the Court has also paid special attention to the efforts made by the States to respond to the situation of extreme gravity and urgency and of irreparable danger, in which the beneficiaries of the measure found themselves.¹⁴

54. Based on the above, if the Court verifies that the State concerned has implemented protection mechanisms or actions for the beneficiaries of the provisional measures, the Court may decide to lift these measures depositing the obligation of protection on the entity primarily responsible for this; namely, the State.¹⁵ When the Court lifts the provisional measures on this basis, it corresponds to the State, in keeping with its obligation to

E.C.H.R., *Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium* (merits), Application No. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64, Judgment of 23 July 1968, para. 10, and Charter of Fundamental Rights of the European Union, Preamble and Article 51(1).

¹³ Cf. *Case of the Massacre of Santo Domingo v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 142, and *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 61.

¹⁴ Thus, for example, in the *Matter of the Mendoza Prisons* with regard to Argentina and in the *Matter of the Kankuamo Indigenous People* with regard to Colombia. Cf. *Matter of the Mendoza Prisons*. Provisional measures with regard to Argentina. Order of the Inter-American Court of Human Rights of November 26, 2010, and *Matter of the Kankuamo Indigenous People*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of November 21, 2011.

¹⁵ Cf. *Case of Carpio Nicolle et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of October 25, 2012, twenty-fifth considering paragraph, and *Case of Carpio Nicolle et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, twenty-first considering paragraph.

guarantee human rights, and its duty to adopt provisions of domestic law, pursuant to Articles 1 and 2 of the American Convention, to maintain the measures of protection that it has adopted and that the Court considered pertinent, and to adopt all those that become necessary subsequently, for as long as the circumstances warrant this.¹⁶

55. The Court observes that, in this matter, the State has made significant efforts to respond to the situation of the members of the humanitarian zones and biodiversity zones mentioned in this Order since the provisional measures in their favor were ordered, and that it has adopted different tangible and other measures to this end, of both an individual and a collective nature. In particular, the Court underlines that the Constitutional Court of Colombia has also ordered measures of protection that cover the beneficiaries of these measures. Furthermore, the Court appreciates the State's compliance with its obligation to provide information periodically on the actions it has taken to implement the provisional measures, as well as the corresponding observations of both the representatives and the Inter-American Commission.

56. Based on all the above, and owing to the specific characteristics of this matter, and in the understanding that the Constitutional Court of Colombia will continue monitoring compliance with its order to protect the communities of the Jiguamiandó and Curvaradó river basins, and that all the other pertinent authorities will continue adopting the series of measures required to respond to the situation of risk faced by the members of the humanitarian zones of Nueva Esperanza, Pueblo Nuevo, Caño Claro and El Tesoro, and of the five biodiversity zones known as Erasmo Sierra, Enrique Petro, Familia Tuberquia, Ligia María Chaverra and Efrén Romaña, members of the communities of the Jiguamiandó and of the Curvaradó, in application of the principle of subsidiarity, pursuant to the Preamble of the American Convention on Human Rights, the Court finds it in order to lift these provisional measures. Nevertheless, as it has already recalled in this Order, the Court notes that significant elements of risk still exist for the members of these communities. Therefore, it should be repeated that Articles 1(1) and 2 of the Convention establish the general obligations of the States Parties to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the full and free exercise of those rights and freedoms, under all circumstances, and to adopt the provisions of domestic law, of both a legislative or any other nature, that are necessary to this end. In this regard, despite the lifting of the provisional measures ordered by this Court, the State retains the special obligation to ensure the rights of these persons through the domestic mechanisms that exist to this end.¹⁷ Furthermore, the lifting of these measures does not preclude that, if

¹⁶ Cf. *Case of Carpio Nicolle et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of October 25, 2012, twenty-fifth considering paragraph, and *Case of Carpio Nicolle et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, twentieth considering paragraph. The implications of the principle of subsidiarity were underlined in the *Case of Acevedo Jaramillo et al v. Peru*, and in the *Case of the Massacres of Santo Domingo v. Colombia*, when the Court recalled that: "the State is the main guarantor of the human rights of the individual, so that, if an act occurs that violates those rights, it is the State itself that has the obligation to resolve the matter at the domestic level and to make reparation, before having to respond before international instances such as the inter-American system for the protection of human rights, which derives from the subsidiary nature of the international proceedings in relation to the national systems to ensure human rights. The domestic courts and State organs have the obligation to ensure the implementation of the American Convention at the domestic level." Cf. *Case of Acevedo Jaramillo et al v. Peru. Interpretation of the judgment on preliminary objections, merits, reparations and costs.* Judgment of November 24, 2006. Series C No. 157, para. 66, and *Case of the Massacre of Santo Domingo v. Colombia. Preliminary objections, merits and reparations.* Judgment of November 30, 2012 Series C No. 259, para. 142.

¹⁷ Cf. *Case of Millacura Llaipén et al.* Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of February 13, 2013, eighteenth considering paragraph, and *Case of Gutiérrez Soler v. Colombia.* Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of October 23, 2012, twenty-first considering paragraph.

necessary, recourse may be had once again to the organs of the inter-American system for the protection of human rights, in order to activate the mechanisms established for situations of extreme gravity and urgency, and the need to avoid irreparable damage

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred by Article 63(2) of the American Convention on Human Rights, and Article 27 of its Rules of Procedure,

DECIDES:

1. To take note of the activities of coordination, design and implementation of measures of protection carried out by the State in favor of the beneficiaries of these provisional measures and, in particular, of their supervision by the Constitutional Court of Colombia.
2. Consequently, and in application of the principle of subsidiarity, and in the understanding that the Constitutional Court of Colombia will continue monitoring compliance with its order for the protection of the communities of the Jiguamiandó and Curvaradó river basins, and that all the pertinent authorities will continue adopting the series of measures required to respond to the situation of risk faced by these communities, to lift the provisional measures ordered by the Inter-American Court of Human Rights since March 6, 2003, and subsequently ratified, in favor of the members of the humanitarian zones of Nueva Esperanza, Pueblo Nuevo, Caño Claro and El Tesoro, and of the five biodiversity zones known as Erasmo Sierra, Enrique Petro, Familia Tuberquia, Ligia María Chaverra and Efrén Romaña, members of the communities of the Jiguamiandó and of the Curvaradó.
3. In the terms of Articles 1(1) and 2 of the American Convention, the lifting of the provisional measures does not mean that the State is relieved of its treaty-based obligations of protection, pursuant to considering paragraphs 13, 17, 21, 25, 54 and 56 of this Order.
4. To require the Secretariat of the Inter-American Court of Human Rights to notify this Order to the Inter-American Commission on Human Rights, the representatives of the beneficiaries of the provisional measures, and the Republic of Colombia.
5. To archive the file of this matter.

Diego García-Sayán
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

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