

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 20, 2012**

**PROVISIONAL MEASURES
REGARDING THE UNITED MEXICAN STATES**

CASE OF FERNÁNDEZ ORTEGA *ET AL.*

HAVING SEEN:

1. The judgment of Preliminary Objection, Merits, Reparations and Costs (hereinafter "the judgment") issued by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of August 30, 2011.
2. The Order of the President of the Court of April 9, 2009, whereby, *inter alia*, she ordered the United Mexican States (hereinafter "Mexico" or "the State") to adopt forthwith all measures necessary to protect the life and personal integrity of the following individuals: (a) Obtilia Eugenio Manuel and certain next of kin; (b) Inés Fernández Ortega and certain next of kin; (c) 41 members of the *Organización del Pueblo Indígena Tlapaneco A.C.* (hereinafter "OPIT" or "OPIM"); (d) 29 members of the *Centro de Derechos Humanos de la Montaña Tlachinollan A.C.* (hereinafter "Tlachinollan"), and (e) certain next of kin of Raúl Lucas Lucía and Manuel Ponce Rosas.
3. The Order of the Court of April 30, 2009, whereby it ratified the Order of the President of the Court and ordered the State to maintain the measures being implemented and adopt the complementary measures necessary to protect the lives and personal integrity of the said individuals.
4. The Orders of the President of the Court of December 23, 2009, and of the Inter-American Court of November 23, 2010, whereby the representatives' requests for extension of the provisional measures were denied.
5. The briefs submitted between July 20, 2009 and December 2, 2011 and their attachments, whereby the State forwarded reports one through fifteen regarding compliance with the provisional measures.
6. The briefs presented between August 21, 2009, and January 10, 2012 and their attachments, in which the representatives of the beneficiaries (hereinafter "the beneficiaries") forwarded observations on the State's reports regarding compliance.
7. The briefs submitted between September 8, 2009 and November 18, 2011, whereby the Inter-American Commission on Human Rights (hereinafter also "the Inter-American Commission" or "the Commission") forwarded its observations on the State's reports and the representatives' observations.

8. The briefs of November 20 and December 18, 2009, January 22, March 16 and 18, July 19, August 31, and December 1, 2010, and March 22, June 23, July 4 and 6, 2011 and their attachments, among others, whereby the representatives reported on alleged threats, harassment, and violence against the beneficiaries of the provisional measures.

9. The brief of May 28, 2010, whereby the Commission reported an incident to the detriment of Ana Luz Prisciliano Fernández.

10. The public hearing on these provisional measures held on June 28, 2011, during the ninety-first regular period of sessions of the Inter-American Court in San José, Costa Rica.

CONSIDERING THAT:

1. Mexico has been a State Party to the American Convention since March 24, 1981 and, in accordance with Article 62 thereof, accepted the jurisdiction of the Court on December 16, 1998.

2. Article 63(2) of the American Convention establishes that, "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission." This provision is in turn regulated by Article 27 of the Court's Rules of Procedure.¹

3. Based on its authority to determine its own competence, in its consistent case law the Court has interpreted Article 63(2) of the American Convention to mean that it can order provisional measures at any stage of the proceedings. This has allowed the Court to order this type of measure or to order that such measures remain in effect even when it has already issued a judgment on the merits and ordered the corresponding reparations, and when the Court is monitoring compliance of those reparations, given that the case remains under the Court's jurisdiction until the State fully complies with the ruling. The Court's exercise of this competence is consistent with the precautionary and protective nature of provisional measures,² and this has allowed the Court to guarantee the protection of the most fundamental human rights, including the right to life and personal integrity and liberty. If the Court did not order this type of safeguard while monitoring compliance with a judgment on the merits and reparations in accordance with the full extent of the provisions of Article 63(2) of the Convention, the Court would be failing to comply with its mandate to "avoid irreparable damage" to persons.

4. Pursuant to Article 63(2) of the Convention, the State's adoption of the provisional measures ordered by the Court is mandatory, given that the basic principle of international law, supported by international case law, has indicated that States

¹ Rules of Procedure passed by the Court in its eighty-fifth regular period of sessions, held on November 16-28, 2009.

² *Cf. Matter of Millacura Llaipén et al.* Provisional Measures with regard to Argentina. Order of the Inter-American Court of Human Rights of November 25, 2010, considering paragraph 3.

must comply with their obligations under the Convention in good faith (*pacta sunt servanda*).³

5. In international human rights law, provisional measures are not only precautionary in nature in the sense that they preserve a legal situation, but are also fundamentally protective, because they protect human rights inasmuch as they seek to avoid irreparable damage to persons. Provisional measures are applied as long as the basic requirements of extreme gravity and urgency and the need to prevent irreparable damage to persons are met. Thus, provisional measures are a true legal guarantee and preventive in nature.⁴

a) Implementation of the provisional measures

6. Regarding the security measures requested by the representatives,⁵ the State reported, *inter alia*, that:

a) it held periodic working meetings with the authorities involved in the enforcement of the measures and the beneficiaries in order to agree on the implementation of the measures;

b) it installed a variety of security mechanisms, including a call recording system, alarms, closed circuit camera systems, motion activated lights, and security locks in the homes and offices of some of the beneficiaries. In addition, it provided communication equipment, such as radios, mobile, satellite, and landline phones, established service contracts, and took steps to address the security requirements of the beneficiaries and their representatives;

c) when it became aware of the technical failures of the equipment provided, it took the pertinent steps to re-establish the services and replace the malfunctioning equipment; in other cases, visits were set up with the beneficiaries' representatives to check the equipment and repair it, and

d) patrols have been conducted, as agreed upon with the representatives, with the exception of instances when bad weather prevented them.

7. The representatives reported "various flaws in [some] of the equipment that made certain measures ineffective," such as satellite phones, communication radios, and mobile phones that did not work, as well as physical security measures that had yet to be implemented in the homes and offices of some of the beneficiaries, such as a remote recording system in an office and the installation of a perimeter alarm at a

³ Cf. *Matter of James et al.* Provisional Measures with regard to Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998, sixth considering paragraph, and *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic*. Provisional Measures with regard to the Dominican Republic. Order of the Inter-American Court of Human Rights of December 1, 2011, third considering paragraph.

⁴ Cf. *Case of the Newspaper "La Nación."* 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 Haitians and Dominicans of Haitian Origin in the Dominican Republic*, *supra* note three, fourth considering paragraph.

⁵ The representatives of the beneficiaries requested security measures consisting generally of the following: a) security infrastructure, b) emergency communication equipment, and c) police escorts and patrols.

home. Patrols have been conducted regularly in the Tlachinollan offices in Tlapa de Comonfort, but have not been conducted consistently and effectively with respect to other beneficiaries and in certain locations. In addition, permanent police presence has been provided consistently at the Tlachinollan offices in Ayutla de los Libres since August 8, 2011.

8. Regarding the State's reports and the representatives' observations, the Commission, among other considerations:

a) assessed positively the State's efforts to correct the operational flaws in the protective measures ordered in favor of the beneficiaries;

b) indicated that despite the time that has elapsed since the Court ordered the provisional measures, the State continues to repeatedly report information on the steps taken toward implementing the remaining measures, and to date those measures have not been implemented. In this regard, the Commission considered that it would be useful and necessary to receive information about those steps the State has said it has taken, and the obstacles preventing them from having a satisfactory result. Similarly, it considered it necessary to receive information about corrective and preventive measures the State is implementing in this regard, and

c) indicated that the implementation of the patrols continues to be flawed, and thus it necessary for the State to intensify its efforts to provide the necessary protection to the beneficiaries.

9. The Court observes that the State took steps aimed at improving the security of the beneficiaries of the provisional measures, such as the delivery of communication equipment, the installation of alarms and other security measures in certain homes and offices, and the implementation of periodic police patrols. In addition, the Court assesses positively the State's efforts to implement the measures ordered by the Court, as well as to correct the operational flaws in the protective measures indicated by the representatives. In regard to the specific protective measures and the discrepancies between the parties regarding compliance with the said measures, the Court recalls that, in its Order of April 30, 2009, it determined that the State must take the pertinent steps in order for the provisional measures to be diligently and effectively planned and applied with the participation of the beneficiaries or their representatives. The Court underlined that the positive participation of the State, and especially of the representatives, is essential for coordinating the implementation of the provisional measures in the instant case. Consequently, the Court deems it necessary for them to continue their efforts in order for the implementation of the instant measures to move forward in a coordinated, constructive, and prompt manner, with communication and agreement between the parties. In addition, the parties must send updated information to the Court on the progress achieved.

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10. With regard to the investigation of the facts that led to the instant measures, the State reported that it began preliminary inquiry proceedings with regard to all the facts about which the representatives filed complaints domestically, and that it has "taken a variety of steps to address the security risks alleged by the beneficiaries." It reported on the incorporation of a team of experts in criminal investigation from a human rights perspective to review the investigations, and that two meetings were

held with the beneficiaries in August and November of 2011 to agree jointly on the implementation of a "protocol for the investigation of threats toward or attacks on the human rights defenders of the state of Guerrero" (hereinafter the "investigation protocol") prepared by the Fundación del Consejo General de la Abogacía Española.

11. Regarding the information concerning investigations into the murder of Lorenzo Fernández Ortega and the forced disappearance, torture, and extrajudicial killing of Raúl Lucas Lucía and Manuel Ponce Rosas, the State indicated that it is taking steps with the Federal Police (Policía Federal Ministerial), and that it met with the beneficiaries to inform them of this.

12. The representatives underlined that to date, 18 preliminary inquiries remain open without those responsible having been brought to justice. In regard to the investigations into the murder of Lorenzo Fernández Ortega and the forced disappearance, torture, and extrajudicial killing of Raúl Lucas Lucía and Manuel Ponce Rosas, they expressed concern over the alleged omissions and flaws of those investigations.

13. The Commission assessed positively the progress made in taking the necessary steps toward implementing the investigation protocol. With regard to the investigations carried out by the State, the Commission recalled that independent of the provisional measures, the State has a particular obligation to guarantee the rights of persons in a situation of risk and must move forward with the investigations necessary to shed light on the facts.

14. The Court takes note of the parties' reports on the presentation of the protocol prepared by Fundación del Consejo de la Abogacía Española and positively assessed the parties' efforts to reach a consensus regarding the implementation of its recommendations.

15. In addition, with regard to the State's report that it is investigating the facts alleged by the representatives, the Court reiterates the State's obligation to investigate the facts as a measure to guarantee the right to life and the right to personal integrity. Nevertheless, within the framework of the instant provisional measures and as it has ruled in other matters,⁶ it will not consider the effectiveness of the investigations conducted or the State's alleged negligence in the said investigations, given that this last point does not form part of its purpose.

b) Information regarding the beneficiaries' situation of risk

16. With regard to the situation of the beneficiaries of the provisional measures, the representatives reported, among others, the following threatening and violent facts:

- a) On June 23, 2009, Margarita Martín Nieves and Santiago Ponce Lola, relatives of Manuel Ponce Rosas, heard gunshots fired by a man from three meters away. Having missed his targets, the attacker chased them in order to shoot at them from closer range. The satellite phone did not work at that time;

⁶ Cf. *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*. Provisional Measures with regard to Brazil. Order of the Inter-American Court of Human Rights of July 3, 2007, seventeenth considering paragraph, and *Matter of Millacura Llaipén et al.*, *supra* footnote 2, fifth considering paragraph.

- b) On June 5, 2009, Rommel Caín Chacan Pele, member of the organization Tlachinollan, received a phone call in which he was told that he was being watched. On July 7 of the same year, he found a piece of paper on the windshield of his car with the same threat;
- c) On July 15, 2009, Obtilia Eugenio Manuel, a member of the organization OPIM, was on her way to Ayutla de los Libres from the city of Cuernavaca, Morelos. At the Cuernavaca terminal, she was followed by two men who asked her whether she was Obtilia and if she was from Ayutla. On hearing this, Obtilia left the terminal and hid in a store until the men following her had left. However, when she took a taxi to another station, she saw the same two men waiting for her in a car with no license plates;
- d) On July 31, 2009, six patrol cars with approximately 30 members of the municipal, state, and federal police went with the community's police chief to the home of Ocotlan Fernández Ortega, brother of Inés Fernández Ortega and a member of the organization OPIM, but no one was home. The said individuals took pictures of the property and asked the neighbors "if it was true that Ocotlan had weapons in his house;"
- e) On August 4, 2009, Natalio Prisciliano Sierra, brother of Fortunato Prisciliano, heard José Margarito Aurora talking to three other people, to whom he said "I'm going to fuck the boss first, then the rest of them;"
- f) On August 6, 2009, while Inés Fernández Ortega and her family were sleeping at home, they heard their dogs barking loudly and her husband got up to check what was going on. He saw José Margarito Aurora standing on his patio with a gun, screaming "I'm at your house, get out here so we can kill you." The next day, Fortunato Prisciliano reported what had happened to the municipal police chief;
- g) On November 12, 2009, Noemí Prisciliano Fernández was subjected to threats and her cell phone was stolen. On November 17, 2009, a claim was filed with the Federal Public Prosecutor's office, thereby opening a preliminary inquiry;
- h) In June, July and October of 2009, Abel Barrera, director of the organization Tlachinollan, was followed on several occasions by Josefát Altamirano García, member of the Mexican army. In addition, he was seen taking photographs outside the Tlachinollan office and outside Mr. Barrera's house. On November 17, 2009, Abel Barrera filed a complaint with the Federal Public Prosecutor's office against Josefát Altamirano García for the crime of harassment;
- i) On January 12, 2010, "two people approached [Noemí Prisciliano Fernández Ortega] from behind and grabbed her, one covering her mouth and the other her eyes. The young men hit her in the face, splitting her lip. [Afterward] they dragged her by her hair, while she screamed to let her go, even though her mouth was covered. When they reached an empty lot, one of them grabbed her violently, covering her mouth with one hand and with the other trying to take off her pants." She defended herself from the attack. When they heard a car, the man holding her let go, and both ran away;"

- j) On March 6, 2010, Obtilia Eugenio Manuel was watched and photographed by a person outside the OPIM office. She later received a written threat, and because of this left the state of Guerrero;
- k) On March 16, 2010, several Tlachinollan members were watched by three men. On March 17, 2010, one of the individuals who was watching them the day before took several photos from two meters away and verbally threatened Andrea Eugenio Manuel, sister of Obtilia Eugenio Manuel;
- l) On July 2, 2010, Abel Barrera and his brother-in-law were intercepted by a car while they were on their way to Mexico City. They were later insulted and their belongings and the car were stolen;
- m) On August 28, 2010, Ana Luz Prisciliano Fernández was followed and threatened by the same men who attacked her on May 17, 2010 (*infra* considering paragraph 19);
- n) On November 28, 2010, Cuauhtémoc Ramírez Rodríguez and Obtilia Eugenio Manuel, among others, found a note containing threats at their temporary residence where they "[had been] forced to move for their safety;"
- o) On March 17, 2011, Abel Barrera received a threatening phone call at the Tlachinollan office. A male voice said "[I]ook sir, stop what you're doing or face the consequences;"
- p) On June 6, 2011, a Mexican army vehicle appeared outside OPIM's offices, located in the city of Ayutla de los Libres. An undetermined number of soldiers got out and proceeded to check all of the cars parked outside the office. After checking the cars and "a harsh verbal exchange" with OPIM staff, they left the premises;
- q) On June 16, 2011, Obtilia Eugenio Manuel and Cuauhtémoc Ramírez received a letter at their home containing threats over their work regarding compliance with the judgments of the Inter-American Court in the cases of Fernández Ortega et al. and Rosendo Cantu et al. The note also contained threats against the organization Tlachinollan;
- r) On June 29, 2011, Rafael Rodríguez Dircio, an OPIM member, was detained by a patrol of the Policía Investigadora Ministerial [Federal Investigative Police] and taken to a prison in Ayutla de los Libres. While he was being transported to the detention center, "the policemen threatened him and told him that if he did not say he was guilty, they would stick his head in a bucket of water." On July 5, 2011, the judge of first instance ordered his release, as there was no evidence to prosecute him, and
- s) On January 21, 2012, the beneficiary Maximino García Catarino, relative of Manuel Ponce Rosas, was arrested by the Federal Investigative Police for his alleged participation in the death of Juan Teodoro García in February of 2011. While he was being transported to the police station, he was "punched and kicked on different parts of his body."

17. In addition, the representatives sustained that in order to determine the pertinence of maintaining these provisional measures in effect, the Court must take

into consideration, among other matters, "[t]he level of violence or risk faced by the group [that] the beneficiaries of a country or region belong to, at a specific moment in time; general considerations regarding the location or population in which the beneficiaries are located[; n]ew or recent facts of violence, threat or harassment committed against one or more of the beneficiaries[; a]ctions taken by the beneficiaries of the provisional measures themselves that reflect a fear of being victimized once again[; t]he level of clarification and ceasing of the factors that led to the risk[, and the] situation of impunity in the contentious case that led to the measures in the instant case." The representatives also indicated that "the increase in the number of different facts and threats [...] indicates that the risk faced by all groups of beneficiaries persists." They "did not consider that the number of persons at risk could be limited to 20; on the contrary, as long as different factors continue to persist, such as impunity and [...] the occurrence of various attacks, which, due to their characteristics and despite being linked to one person or certain persons in particular, indicate a risk to the group to which that person belongs," and "[are] fully convinced that the beneficiaries of all the groups identified [...] are at risk." Lastly, they reported that the following beneficiaries no longer work at Tlachinollan: Claudia Ordoñez Viquez, Isauro Romero Solano, Dionicio Villano González, Jane Eva Jones, Laura Lizette Aragón Castro, Mario Patrón Sánchez, Patricia Bordier Morteo, Prometeo Rodríguez Lucero, Teresa de la Cruz, Alejandra Gonzáles Marín and Rommel Cain Chacan Pale.

18. Regarding the beneficiaries' situation of risk, the State requested an assessment of the conditions established in the American Convention for the maintenance of measures with regard to each and every one of the beneficiaries. Firstly, it requested "an assessment of whether the 108 beneficiaries continue to face a situation of gravity and urgency." The State alleged that in the beneficiaries' reports to the Court, they only showed that a small group faces a situation of risk, comprised of: (a) Inés Fernández Ortega and her immediate family; (b) Cuauhtémoc Ramírez and Otilia Eugenio Manuel, directors of OPIM, and (c) Abel Barerra Hernández, Director of the Centro de Derechos Humanos Tlachinollan and the people directly involved with the defense in Ms. Fernández Ortega's case. With respect to the others, the State affirmed that "there are no grounds to indicate that the [beneficiaries] are facing a situation of gravity and urgency that would support a decision to leave the provisional measures to their benefit in effect." Regarding the State's capacity to handle the situations of risk that may arise for the beneficiaries, it considered that "the effectiveness of the measures implemented is reflected in the decrease in the risk faced by the majority of beneficiaries."

19. The Commission reported that on May 17, 2010, Ana Luz Prisciliano Fernández "received death threats against her and her parents. [She] was intercepted by two individuals who asked about her parents and about those accompanying her mother in the proceedings [;] they stole her cell phone [and] one of the men put a kitchen knife to her waist while they tried to get her into a vehicle. However, [she] was able to break free and run home."

20. In addition, the Commission underlined that "the instant provisional measures protect not only the victims of the case and their defenders, but also the people who belong to the organizations that defend human rights, with this being the main reason they are the target of threats and harassment." The Commission thus considered that the gravity and urgency of these measures remain, in light of the visibility of the cases in question.

21. With regard to the new facts carried out against the beneficiaries, the Commission indicated, among other matters, that:

a) It observed with concern the information regarding the minor Ana Luz Prisciliano Fernandez, in particular, that it would be necessary for formal complaints to be filed in order to seek justice for these facts, and that the State is conditioning the beneficiaries' procedural initiative in order for them to pursue prosecutions of incidents, especially those related to threats to their lives and personal integrity;

b) The State has partially complied with the measures of protection ordered by the Court. However, it highlighted the information with regard to the increase in threats and harassment against the beneficiaries of the measures, despite the fact that the measures remain in effect. In this regard, the Commission "observe[d] with concern that the beneficiaries' risk situation is not being addressed adequately and has not been reduced, not even with the security measures taken on the beneficiaries' own initiative;"

c) The lack of adequate implementation of the protective measures in light of the frequent threats against the beneficiaries "makes it vital and urgent to adopt concrete measures that ensure [the] satisfactory protection of the beneficiaries," and

d) Some of the threats against the beneficiaries "expressly mentioned the cases the beneficiaries are defending at the domestic and the Inter-American level."

22. From the information provided by the parties, the Court observes that, regardless of the measures stipulated in the Order of April 30, 2009, there have been reports of several incidents involving harassment, threats or acts of violence against some of the beneficiaries (*supra* considering paragraphs 16 and 19). In light of this situation, the Court reiterates that the State must provide the beneficiaries with due protection of their personal integrity, in accordance with the orders issued through the instant provisional measures, and the agreements with the representatives.

23. It cannot be inferred from the information provided that all of the facts reported by the representatives are linked to the facts of the contentious case of *Fernández Ortega et al.*, or with the events that justified the adoption of the provisional measures at the appropriate time. For its part, the State has reported that it began conducting preliminary inquiries into all of the claims filed domestically, and thus there are ongoing investigations. Additionally, some of the facts of harassment, violence and threats carried out against some of the beneficiaries of the provisional measures demonstrate the persistence of their situation of extreme gravity and urgency, and represent an imminent risk to their lives and personal integrity.

24. With regard to Inés Fernández Ortega's family, several incidents occurred between 2009 and 2010 that were directed toward her daughters, both minors, as well as other relatives (*supra* considering paragraphs 16 and 19). Similarly, the beneficiaries Obtilia Eugenio Manuel and Cuauhtemóc Ramírez Rodríguez received threats both in the state of Guerrero as well as at a temporary residence in another state, where they had moved for their safety (*supra* considering paragraphs 16(c), (j), (n) and (q)). These threats were linked to their work in the *Fernández Ortega* case.

Moreover, the beneficiary Abel Barrera, director of the organization Tlachinollan, received threats in 2009 and 2011. These threats mentioned his organization's work and the said contentious case (*supra* considering paragraphs 16(h) and (o)). Additionally, other members of this organization observed acts of harassment or threats while at their office (*supra* considering paragraph 16(k)).

25. Regarding the next of kin of Raúl Lucas Lucía and Manuel Ponce Rosas, the Court verifies that aside from an incident that occurred in June 2009, no recent events directly linked with the *Fernández Ortega* case have been reported that would place their integrity or security at risk. In this regard, with respect to the last fact reported by the representatives (the arrest of Máximo García Catarino), the Court observes that it is in no way related to the said contentious case, but rather has to do with a Federal Public Prosecutor investigation into the death of a person, in which two witnesses had allegedly indicated that Mr. García Catarino participated in the fact. Moreover, the representatives' argument that there is risk to the next of kin because the investigation of the forced disappearance and subsequent torture and execution of Raúl Lucas Lucía and Manuel Ponce Rosas has not been completed, does not provide a strong basis on which to conclude that there continues to be a situation of extreme gravity and urgency in which it is urgent to prevent possible irreparable damage to the persons. The Court recalls its criteria that the burden of proof and argument is different when adopting provisional measures compared to when requesting they be continued (*infra* considering paragraph 27).

26. With regard to the members of OPIM, the Court observes that it is not evident that all of the facts claimed by the representatives are related to the *Fernández Ortega et al.* case. In fact, notwithstanding the Court's Order of November 23, 2010 dismissing a request to extend the provisional measures, the representatives continued to indicate facts included in the said request as evidence of the risk faced by the members of that organization. In addition, it cannot be inferred that "the harsh verbal exchange" and the attempt made by members of the army to inspect private vehicles on June 6, 2011 (*supra* considering paragraph 16(p)), represent the continuation of a situation of risk of irreparable damage to all of the organization's members. The Court does not have enough information on the continued situation of risk of the beneficiaries of the instant provisional measures to allow it to verify the persistence of the situation of extreme gravity, urgency and need to prevent irreparable damages to these persons. Therefore, it asks the representatives to provide a detailed report on the situation of risk faced by each of the individuals in the group of beneficiaries (*infra* considering clause 31).

27. The Court recalls that when issuing protective measures, the assessment standard of these requirements by the Court or whoever presides is *prima facie*, and the application of presumptions is at times necessary in light of the needs for protection.⁷ Notwithstanding the foregoing, the maintenance of the protective measures demands a more rigorous assessment by the Court in terms of the persistence of the situation that resulted in these measures.⁸ If a State requests the

⁷ 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 *Matter of Ramírez Hinojosa et al.* Provisional Measures with regard to Peru. Order of the Inter-American Court of Human Rights of November 22, 2011. Twentieth considering paragraph.

⁸ 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 *Matter of Ramírez Hinojosa et al.*, *supra* footnote 7, considering paragraph 20.

lifting or modification of the provisional measures ordered, it must present sufficient evidence and arguments to allow the Court to assess that the risk or threat no longer meets the requirements of extreme gravity and urgency to prevent irreparable damage. At the same time, the beneficiaries' and the Commission's burden of proof will increase over time and if new threats do not arise. The fact that there are no new threats may indeed be due precisely to the effectiveness of the protection provided or the deterrence caused by the Court's order. Nevertheless, the Court has found that the passage of a reasonable period of time without threats or intimidations, in addition to the lack of imminent risk, can lead to the lifting of the provisional measures.⁹

28. In turn, the Court must also bear in mind that, in accordance with the Preamble to the American Convention, international protection under the Convention is "reinforcing or complementing the protection provided by the domestic law of the American states." Therefore, if it is proven that the State concerned has taken protective actions or put protective mechanisms in place that were effective for the beneficiaries of the provisional measures, the Court could decide to lift the provisional measures or reduce the number of beneficiaries thereof, placing the obligation of protection upon its primary responsible party, that is, the State.¹⁰ Should the number of beneficiaries of the provisional measures be reduced or should the measures be lifted by the Court for this reason, it is the State's obligation to guarantee human rights, maintain the protective measures that it had adopted and that the Court considered effective, for as long as the circumstances merit.

29. In this regard, and bearing in mind the foregoing, the Court observes that the representatives reported that 11 beneficiaries are no longer part of the Tlachinollan organization (*supra* considering paragraph 19). With regard to these persons, the Court decides to lift the provisional measures with respect to them, as there have been no reports that verify the requirements for leaving the measures in place.

30. Similarly, with regard to Raúl Lucas Lucía's and Manuel Ponce Rosas' next of kin, the Court has not received information since the adoption of the provisional measures in April 2009 to indicate that they are in a situation of risk (*supra* considering paragraphs 16 and 25). Furthermore, the State has reported on the actions taken in the investigation into the disappearance and death of Raúl Lucas Lucía and Manuel Ponce Rosas (*supra* considering paragraph 11). In view of the lack of information on recent facts linked to the contentious case of *Fernández Ortega et al.*, the Court decides to lift the provisional measures benefiting those individuals.

31. The Inter-American Court also takes note of the State's initiative to promote the adoption of domestic protective measures. In regard to the lifting of the protective measures regarding these persons, the Court recalls that Article 1(1) of the Convention establishes the member States' general obligations to respect the rights and freedoms enshrined therein, and to guarantee their free and full exercise for any person subject to its jurisdiction. Consequently, regardless of the existence of specific provisional measures, the State is specially obligated to guarantee the rights of persons in situations of risk and must move forward with the investigations necessary to clarify

⁹ Cf. *Matter of Gallardo Rodríguez*. Provisional Measures with regard to Mexico. Order of the Inter-American Court of Human Rights of July 11, 2007, eleventh considering paragraph, and *Matter of Ramírez Hinojosa et al.* *supra* footnote 7, twentieth considering paragraph.

¹⁰ Cf. *Matter of Luis Uzcátegui*. Provisional Measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of February 20, 2003, thirteenth considering paragraph, and *Matter of Ramírez Hinojosa et al.* *supra* footnote 7, twenty-first considering paragraph.

the facts, followed by the consequences established in pertinent legislation.¹¹ Moreover, the Inter-American Court has, at other times, underlined the States' obligation to provide specific protection to persons working in the defense of human rights.¹²

32. In addition, some of the facts carried out to the detriment of certain beneficiaries related with the organizations Tlachinollan and OPIM must be specified. Bearing in mind the temporary nature of the provisional measures and the fact that they have been extended for almost three years, and in order to assess the need to keep them in effect for the current members of the OPIM and Tlachinollan, it is essential for the representatives to forward detailed and updated information on the circumstances of risk to the life and personal integrity of these persons. Specifically, and beyond what has already been reported, the representatives must forward detailed supporting information about: (a) the threats that each of these beneficiaries suffered, and (b) the relationship between these facts and the grounds justifying the adoption of the instant provisional measures at that time, in order to fulfill the requirements for maintaining these measures in effect.

33. From the foregoing, the Court considers it appropriate to keep the provisional measures in effect. Based on those measures, the State has the obligation to protect the life and personal integrity of: (a) Obtilia Eugenio Manuel and her next of kin, declared beneficiaries of the instant measures at the appropriate opportunity; (b) Inés Fernández Ortega and her next of kin, declared beneficiaries of the instant measures at the appropriate opportunity; (c) the members of *Organización del Pueblo Indígena Tlapaneco A.C.*, declared beneficiaries of the instant measures at the appropriate opportunity;¹³ and (d) the 18 members of the *Centro de Derechos Humanos de la Montaña Tlachinollan A.C.*¹⁴

¹¹ Cf. *Case of Velásquez Rodríguez*. Provisional Measures with regard to Honduras. Order of the Court of January 15, 1988, third considering paragraph, and *Matter of the Guatemalan Forensic Anthropology Foundation*. Provisional Measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of February 22, 2011, forty-first considering paragraph.

¹² Cf. *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of February 9, 2006, fourteenth considering paragraph, and *Case of Fernández Ortega et al.* Provisional Measures with regard to Mexico. Order of the Inter-American Court of Human Rights of November 23, 2010, tenth considering paragraph.

¹³ The 41 members of the Organización del Pueblo Indígena Tlapaneco who are beneficiaries of these provisional measures are: Victoriano Eugenio Manuel, Gabino Eugenio Manuel, Juan Remigio Guzmán, Raúl Hernández Abundio, Rafael Rodríguez Dircio, Severo Eugenio Remigio, Manuel Cruz Victoriano, Orlando Manzanares Lorenzo, Natalio Ortega Cruz, Romualdo Santiago Enedina, Braulio Manzanares Lorenzo, José Eugenio Cruz, Félix Ortega Dolores, Merced Santiago Lorenzo, Arturo Cruz Ortega, Leopoldo Eugenio Manuel, Ubaldo Santiago Eugenio, Arnulfo Cruz Concepción, Silverio Remigio Guzmán, Crisóforo Manzanares Lorenzo, Taurino Fernández Santiago, Ocotlán Fernández Ortega, Mauricio Cruz Morales, Viviano García Santiago, Julio Bolanos Santiago, José Espinoza Eugenio, Ramón Ortega Cruz, Virgilio Cruz Ortega, Victoriano Ortega Cruz, Marcelino Santiago Flores, Justino García Santiago, Crispín Santiago González, Natalio Eugenio Catarino, Fausto Santiago González, Leopoldo Eugenio Rufina, Vicente Díaz Luciano, Socimo Manuel Sierra, Santiago Manuel Sierra, Ramiro Flor Cresencio, Milenio Flores de Jesús and Romualdo Eugenio Estrada.

¹⁴ The 18 members of Tlapaneco who are beneficiaries of these provisional measures are: Abel Barrera Hernández, Alejandro Ramos Gallegos, Armando Campos Ochoa, Epifania Ramírez Arias, Eulogia Flores Vázquez, Gabino Santiago Jiménez, Isidoro Vicario Aguilar, Margarita Nemecio Nemesio, Matilde Pérez Romero, Neil Arias Vitinio, Odilia Alatorre Villavicencio, Olivia Arce Bautista, Paulino Rodríguez Reyes, Roberto Gamboa Vázquez, Vidulfo Rosales Sierra, Fidela Hernández Vargas, Juan Castro Castro and Rogelio Téliz García.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES TO:

1. Lift the provisional measures ordered by the Court on April 30, 2009 with regard to Claudia Ordoñez Viquez, Isauro Romero Solano, Dionicio Villano González, Jane Eva Jones, Laura Lizette Aragón Castro, Mario Patrón Sánchez, Patricia Bordier Morteo, Prometeo Rodríguez Lucero, Teresa de la Cruz de la Cruz, Alejandra Gonzáles Marín, Rommel Cain Chacan Pale; the next of kin of Raúl Lucas Lucía and Manuel Ponce Rosas: Guadalupe Castro Morales, Samuel Lucas Castro, Gaudencia Jesús García, María Inés Lucas Castro, Carmen Lucas Lucía, Yareli Alejandro Lucas, Julio Alejandro Lucas, Marco Antonio Alejandro Lucas, Fidel Alejandro Lucas, Margarita Martín de las Nieves, Efrén Ponce Martín, Fermín Ponce Martín, Felipe Ponce García, María Aurora Venancio, Rufina Ponce, Ernesto Porfirio, Santiago Ponce Rosas, Alicia Ponce Lola, Victoriano Ponce Lola, Toribio Santos Flores, Jorge Luis García Catarino, Aurelio García de los Santos, Cándida García Rufina, Santiago Ponce Lola and Maximino García Catarino.
2. Reiterate that the State must continue to adopt forthwith all complementary measures necessary to protect the lives and personal integrity of: (a) Obtilia Eugenio Manuel and certain next of kin; (b) Inés Fernández Ortega and certain next of kin; (c) 41 members of the Organización del Pueblo Indígena Tlapaneco A.C., and (d) 18 members of the Centro de Derechos Humanos de la Montaña (*supra* considering paragraph 33), taking into account the specific circumstances of risk.
3. Reiterate that the State must take all the steps necessary for the protective measures stipulated in the instant Order to be planned and implemented with the participation of the beneficiaries or their representatives, such that they be provided in a diligent and effective manner, and that, in general, they be kept informed on the progress of the measures' implementation.
4. Require the representatives to forward the information indicated in considering paragraph 32 of the instant Order to the Inter-American Court of Human Rights, together with their observations on the next State report, required in the sixth operative paragraph of this Order.
5. Require the State to continue reporting to the Inter-American Court of Human Rights every three months, starting on the notification date of the instant Order, on the provisional measures adopted in accordance with this decision.
6. Request the representatives of the beneficiaries of the instant measures and the Inter-American Commission on Human Rights to submit their observations on the State's reports within four and six weeks, respectively, beginning with the date on

which they are notified of the State's reports, indicated in the previous operative paragraph.

7. Order the Secretariat to notify the State, the Inter-American Commission, and the beneficiaries' representatives of this Order.

Judge Vio Grossi expressed his concurring opinion, which accompanies this Order.

Diego García-Sayán
President

Manuel Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri

Secretary

CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI
ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 20, 2012
PROVISIONAL MEASURES WITH REGARD TO THE UNITED MEXICAN STATES
CASE OF FERNÁNDEZ ORTEGA *ET AL.*

With my vote, I concur with the Order indicated in the title. Nevertheless, let the record to show that the Inter-American Court of Human Rights (hereinafter "the Court") had adopted provisional measures in the case it had "under consideration",¹ and having issued the judgment, which is "final and not subject to appeal"² and which put an end to the case, its jurisdiction with regard to these provisional measures has ended. Henceforth, the Court must only "monitor" compliance with the judgment,³ and it is therefore not possible for the Court to issue new provisional measures during this monitoring phase, given that the said contentious case is no longer "under its consideration", that is, the Court has already "tried" the case.

Furthermore, it must be recalled that once a judgment is issued, the Court then only issues the judgment on reparations and costs, if it has not done so already,⁴ interprets both rulings,⁵ rectifies any clerical errors or errors in calculation that have occurred,⁶ monitors compliance⁷ and reports to the OAS General Assembly on non-compliance.⁸ The Court has not been granted the authority to order new provisional measures "during the stage of monitoring compliance with the judgment," and there is no grounds for ordering such measures when a case is at that stage, as that stage's only purpose (as its name would indicate) is to verify, through reports that the Court requests from the parties,⁹ whether the State concerned has complied or not with the rulings in the corresponding judgments.

Based on this, such measures must be logically understood as part of the ruling, which is "final and not subject to appeal," that decided the contentious case and which carries the weight of *res judicata*. Therefore, the measures form part of the obligations of the State concerned, not of the Court, derived from the order therein, that it guarantee that "the injured party be [assured] the enjoyment of his right or freedom that was violated"¹⁰ and adopt the measures necessary to "avoid irreparable damage to persons"¹¹ concerned. Otherwise, the ruling in question would not be final, nor would it adjudicate the case. Therefore, compliance with those measures must be monitored as "part" of the judgment in question and not as if they formed part of a different and autonomous proceeding in which new provisional measures could be ordered, which, in practice, prolong the proceeding.

Finally, it is my opinion that the Order to which I concur with my vote should be understood to be part of the monitoring of compliance with the said judgment. This, in

¹ Article 67 of the American Convention on Human Rights.

² Article 63(2), *idem*.

³ Article 69 of the Rules of Procedure of the Court. See the concurring opinions of the undersigned on Orders of compliance with judgments in the cases of *Blanco Romero et al. v. Venezuela*, *Servellón García et al. v. Honduras* and *Saramaka v. Suriname*, of November of 2011.

⁴ Article 66 of the Rules of Procedure of the Court.

⁵ Article 67 of the Convention. Article 68 of the Rules of Procedure of the Court.

⁶ Article 76 of the Rules of Procedure of the Court.

⁷ Article 69 of the Rules of Procedure of the Court.

⁸ Article 65 of the Convention. Article 30 of the Statute of the Court.

⁹ Article 69 of the Rules of Procedure.

¹⁰ Article 63(1) of the Convention.

¹¹ Article 63(2), *idem*.

turn, should have explicitly included an obligation for the State to comply with the provisional measures ordered, which would be considered to be lifted, and thus the ruling executed, once the "extreme gravity and urgency" and the risk of "irreparable damage to persons" that justified the adoption of the measures have disappeared. In this way, there would have been no room for doubt or uncertainty on this issue. Of course, should the State fail to comply with the measures, the Court could report the failure to comply with the ruling to the OAS General Assembly.¹²

The more detailed grounds for this position, which considers, as has been indicated on another occasion,¹³ that on one hand, that the Court's strict respect for the rules that govern it is a *sine qua non* for duly safeguarding human rights, while on the other hand, jurisprudence is an auxiliary means for determining the rules of law¹⁴ and is obligatory only for the parties in dispute and with regard to the case that has been decided,¹⁵ and can therefore be modified in other cases. This is found in the dissenting opinions on the same matter that I issued on July 15, 2011, with regard to the Orders of the Court related to "Provisional Measures with regard to the Republic of Colombia, Case of Gutiérrez Soler v. Colombia", of June 30, 2011, "Provisional Measures with regard to Mexico, Case of Rosendo Cantú et al. v. Mexico," of July 1, 2011, and "Provisional Measures with regard to the Republic of Honduras, Case of Kawas Fernández v. Honduras," of July 5, 2011, as well as in the brief, related with these same Orders, that I presented before the Court on August 17, 2011, an argument that I have reiterated in other cases¹⁶ and matters.¹⁷

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

¹² Article 65 of the Convention.

¹³ Dissenting Opinion on the Judgment of the Inter-American Court of Human Rights on the Merits, Reparations, and Costs, *Case of Barbani et al. v. Uruguay*, Judgment of October 13, 2011, III. General Considerations.

¹⁴ Articles 62(1) and (3) of the Convention and Article 38(1) of the Statute of the International Court of Justice.

¹⁵ Articles. 63(1) of the Convention and Article 59 of the Statute of the International Court of Justice.

¹⁶ Concurring Opinion, *Case of Torres Millacura et al. v. Argentina*, Judgment of August 26, 2011, *Merits, Reparations and Costs*, and Concurring Opinion, *Case of Barrios Family v. Venezuela*, Judgment of November 24, 2011, *Merits, Reparations and Costs*.

¹⁷ Dissenting Opinion, Order on Provisional Measures, *Matter of Millacura Llaipén with regard to Argentina*, November 25, 2011.