

**Order of the
Inter-American Court of Human Rights*
of February 6, 2008
Provisional Measures
regarding Mexico
Matter of Pilar Noriega García *et al.***

HAVING SEEN:

1. The Order issued by the President of the Inter-American Court of Human Rights (hereinafter, "the Court" or "the Inter-American Court") on October 25, 2001, and the Orders issued by the Court on November 30, 2001, on April 20, 2004, on June 29, 2005 and on November 24, 2005. By means of the latter, the Court decided:

1. To request the State to keep the measures necessary to protect the life and physical integrity of Pilar Noriega-García, Bárbara Zamora-López, Leonel Rivero-Rodríguez, María de los Ángeles Espinosa-Sánchez, Augusto César Sandino Rivero-Espinosa, Luisa Amanda Rivero-Espinosa, María Katherina Rivero-Espinosa, Eusebio Ochoa-López and Irene Alicia Plácido-Evangelista, and of Carmen, Jesús, Luz María, Eusebio, Guadalupe, Ismael, Elia, Estela, Roberto, Juan Carlos, Ignacio y Agustín, all of them Ochoa y Plácido.

2. To request the State to continue the investigation of the facts that gave rise to the above-mentioned provisional measures in order to identify the responsible parties and to impose the pertinent punishment.

[...]

2. The communication of the Inter-American Commission of August 22, 2007, in response to the Court's request for information regarding the procedural status of the instant case before said body, by means of which it informed that "the petition was assigned number 12,229 'Digna Ochoa *et al.*' and it is in the admissibility stage."

3. The communication of the Secretariat of the Inter-American Court of August 23, 2007, by means of which the Court requested the representatives and the Commission to submit detailed and updated information on the persistence of the situation of extreme gravity and urgency before the Court, and the need to avoid irreparable damage regarding each of the beneficiaries of these provisional measures.

4. Reports 24th to 36th of the United Mexican States (hereinafter, "the State" or "Mexico") submitted between December 19, 2005, and December 18, 2007, as well as other additional briefs, by means of which the State informed on the protection measures adopted with regard to the beneficiaries and it referred to the investigation of the facts which gave rise to the adoption of the provisional measures. As to the

investigations of the facts which entailed the adoption of the provisional measures in favor of Mr. Leonel Rivero, the State pointed out that on October 11, 2007, the Public Prosecutor's Office of the Federal District postponed the non-exercise of the criminal action. The beneficiary filed an appeal for reconsideration of said decision, which is being analyzed at the *Fiscalía Central de Investigación para Delitos Financieros* (Solicitor General Office for the Investigation of Financial Crimes). As to the preliminary inquiry on the threats against Bárbara Zamora, the State informed that it did not yield sufficient elements to prove the claimed crime, reason for which the Attorney General of the Federal District ruled for the non-exercise of the criminal action. On December 3, 2003, said decision by the Attorney General was notified to the beneficiary, who did not appeal. As to the rounds, the State argued that they have taken place in a regular way at the domicile provided by Mr. Rivero, but considering that "no one has been found, [...] the rounds forms do not include his signature." Furthermore, the four cellular telephones owned by the Rivero family and the fourteen cellular telephones owned by families Ochoa y Plácido work in a regular manner. Finally, the State pointed out that from the granting of these provisional measures, the only beneficiary who has claimed possible new threats has been Mr. Leonel Rivero, and that such claims "have been investigated according to the law in every case, in compliance with the State's obligation to investigate."

5. The briefs submitted by the representatives of the beneficiaries of the provisional measures (hereinafter, "the representatives") presented between January 20, 2006, and January 9, 2008, by means of which they forwarded their remarks to the State's reports. With regard to the protection measures, they expressed their agreement on how some of them were being developed, and they disagreed with the State as to the implementation of others. On the other hand, they enhanced the lack of progress in the investigation of the facts which gave rise to the provisional measures. In that sense, in their brief of December 5, 2007, the representatives requested the Court to keep those measures in force regarding all the beneficiaries, "[b]ecause the facts which gave rise to these provisional measures have not been clarified nor have the responsible parties been identified." They further requested that the "State be urged to seriously investigate the facts and to thoroughly and truly inform on the status of the investigations", and especially that the State "provide sufficient and detailed information regarding the investigations on the threats suffered by Pilar Noriega and Digna Ochoa, as well as the murder of Digna Ochoa y Plácido."

Later on, in their brief of January 9, 2008, the representatives provided the domicile of Mr. Leonel Rivero-Rodríguez, so that the State "take the necessary actions in order to guarantee the safety of the beneficiary and his family"; they expressed their concern for the closure of the preliminary inquiries as to the facts denounced by said beneficiary, decision which "tends to foster impunity", and they affirmed that "the risk to which the beneficiary and his family are exposed continues to exist." With regard to Pilar Noriega-García, they enhanced "the repeated omission to inform on the assertions made regarding the investigation of the facts which gave rise to the provisional measures ordered [...]" in her favor. They have stated that the State "has omitted to provide detailed information on the procedural situation of the investigation of the threats received by Digna Ochoa y Plácido and Pilar Noriega-García, and that the State must especially inform on the investigation of the death of the former, as that constitutes the essential origin of the provisional measures." Regarding Bárbara Zamora-López, the representatives expressed that "the Mexican State has been changing the reasons for which it has denied a copy of registered file

FACI/SOT/50/272/02-03 of the preliminary inquiry." They argued that the State "has repeatedly eluded to provide a direct and specific answer to the petition made by Ms. Zamora, so as to know the reasons why it was decided to shelve the file" and they considered it "essential" to "inform the reasons for the shelving of the preliminary inquiry where the facts which originated these provisional measures were being investigated." With regard to the family Ochoa y Plácido, the representatives also pointed out that the State "continues failing to inform on the progress of the investigations relating to the threats suffered by Digna Ochoa y Plácido and her murder." They came to the conclusion that as long as those facts are not clarified, the risk against the life and integrity of the family Ochoa y Plácido continues to exist.

6. The briefs of the Inter-American Commission on Human Rights (hereinafter, "the Commission" or the "Inter-American Commission") presented between April 13, 2006, and January 31, 2008, by means of which it forwarded its remarks to the information provided by the State regarding the protection measures and the investigations. In its brief of October 16, 2007, the Inter-American Commission took note "with satisfaction of the elements which evidence the implementation of different protection measures" and it expressed "the need to have information on the investigations regarding the threats received by Pilar Noriega, Bárbara Zamora, Leonel Rivero and his family, and the family of Digna Ochoa, investigations which must operate as a measure to prevent the repetition of risk facts." On that matter, the Inter-American Commission repeated that considering that the facts which gave rise to the provisional measures have not been clarified, and that the responsible parties have not been identified, it can not be concluded that the risk against the life and the integrity of the beneficiaries has been eradicated. Finally, in a brief dated January 31, 2008, the Inter-American Commission presented its remarks on the protection and investigation measures informed by the State and it made no reference to recent facts of threats against the life or physical integrity of the beneficiaries.

7. The public hearing on provisional measures held at the seat of the Inter-American Court of Human Rights on February 5, 2008.¹

CONSIDERING:

1. That Mexico is a State Party to the American Convention on Human Rights (hereinafter, "the Convention") since March 24, 1981, and that, pursuant to Article 62

¹ Present at this hearing: a) for the Inter-American Commission: Florentín Meléndez, delegate, and Mario López-Garelli and Lilly Ching Soto, advisors; b) for the Mexican State: Armando Vivanco-Castellanos, Deputy General Director of the General Direction of Human Rights of the Secretariat of Foreign Affairs; José Ignacio Martín del Campo, Director of International Litigation of the Secretariat of Foreign Affairs; Rodrigo Espeleta-Alandro, Deputy General Director of the Unit for the Promotion and Defense of Human Rights of the Government Secretariat; Fernando Coronado-Franco, Deputy Legal and Human Rights Prosecutor of the Attorney General of the Federal District, and Ana Luisa Ramírez-Hernández, General Director of Human Rights of the Attorney General of the Mexican State; and c) on behalf of the beneficiaries representatives: Vanessa Coria, Luis Diego Obando and Soraya Long, of the Center for Justice and International Law (*Centro por la Justicia y el Derecho Internacional* – CEJIL-) and Leonel Rivero-Rodríguez.

thereof, it accepted the contentious jurisdiction of the Inter-American Court on December 16, 1998.

2. That when ordering the adoption of provisional measures on November 30, 2001, and their maintenance on April 20, 2004, on June 29, 2005, and on November 24, 2005, in the instant case (*supra* Having Seen paragraph No. 1), the Court considered that the presented background *prima facie* indicated the existence of a situation of urgent and serious danger for the life and physical integrity of the beneficiaries.

3. That out of the briefs forwarded by the State (*supra* Having Seen paragraph No. 4) and the remarks made by the representatives and the Inter-American Commission (*supra* Having Seen paragraphs No. 5 and 6) it arises that beneficiaries Pilar Noriega-García, Bárbara Zamora-López and the members of the family Ochoa y Plácido have not informed the Inter-American Court -over the last years- on any threats against them or any other act which may endanger their life or physical integrity; they have only referred to problems related to the investigation of the facts which motivated the adoption of the provisional measures.

4. That as to beneficiary Pilar Noriega García, in response to the Court request for detailed and updated information on the persistence of the situation of extreme gravity and urgency (*supra* Having Seen paragraph No. 3), in their brief dated September 21, 2007, the beneficiaries reproduced the information provided by the beneficiary, who did not inform the Court on any threats over the last years. On the contrary, the beneficiary referred to the lack of information on the investigations of the threats prior to 2001, which gave rise to the adoption of the provisional measures. Furthermore, in that brief the beneficiary insisted on that "as long as the pertinent investigation is not carried out and exhausted [...] and [...] information is not provided in the proper manner, the State is failing to comply with an essential part of the provisional measures", and that "as long as the results are not reported, the measures must be kept so as to safeguard her physical integrity and safety." On the other hand, the Court observes that at the public hearing of February 5, 2008, no specific recent facts which could imply a situation of extreme gravity and urgency regarding the beneficiary were informed either.

5. That as to beneficiary Bárbara Zamora-López, in response to the Court request for detailed and updated information on the persistence of the situation of extreme gravity and urgency (*supra* Having Seen paragraph No. 3), in their brief dated September 21, 2007, the representatives did not inform on any risk fact against her life or physical integrity. Moreover, they informed that the beneficiary herself expressed that "over the last years she has not received any threats." Notwithstanding the above, they considered that "the risk of a new aggression continues to exist as long as the source of the intimidation and the responsible parties" of the fact occurred in March 2002, and which motivated the adoption of measures in her favor are not identified. The representatives stated that the beneficiary was not able to obtain a copy of the decision which deemed the investigation of the alleged threats against her concluded, as well as the lack of notice of said measure. They further stated that the beneficiary "did not have access to the

file", reason for which "it [was] likely [to] determine that the State has failed to comply with its obligation to investigate in a serious, thorough and effective manner the facts" which gave rise to the measures in her favor. On the other hand, the Court observes that at the public hearing of February 5, 2008, no specific recent facts which could involve a situation of extreme gravity and urgency regarding this beneficiary were informed either.

6. That as to the alleged lack of information on the investigation of the alleged threat occurred in 2002, against Bárbara Zamora, the State expressed that it served notice of the decision of non-exercise of the criminal action upon the claimant, and it further informed the name of the person who, on December 8, 2003, allegedly received the summons of said decision, and it attached a copy thereto. The State further expressed that in several occasions the beneficiary was informed that she could turn to the *Fiscalía Central de Investigación para la Seguridad de las Personas e Instituciones* (Central Public Prosecutor Office of Investigation for the Safety of Persons and Institutions) in order to request that the preliminary inquiry be recovered from the Recording Office of the Attorney General of the Federal District and personally consult the agreement of non-exercise of the criminal action. Finally, the State attached a copy of the decision of non-exercise of the criminal action. In said decision there is a reference to the event considered as threatening by the beneficiary, the investigation proceedings adopted and the grounds due to which it was decided not to exercise the criminal action in said preliminary enquiry.

7. That as to the members of family Ochoa y Plácido, in response to the Court request for detailed and updated information on the persistence of the situation of extreme gravity and urgency (*supra* Having Seen paragraph No. 3), in their brief dated September 21, 2007, the representatives did not inform on any fact which may imply a risk for their life or physical integrity. However, the representatives expressed that "[a]s long as [...] there is no progress in the investigations and as long as the murder of Digna Ochoa is not clarified, the risk suffered by their next of kin is updated and remains in force." On the other hand, the Court observes that at the public hearing of February 5, 2008, no specific recent facts which could imply a situation of extreme gravity and urgency regarding the members of the Ochoa y Plácido family were informed either.

8. That nonetheless, at the above-mentioned hearing, the representatives affirmed that the investigation of the death of Digna Ochoa y Plácido would be reopened and would gain new impulse as "new elements which would allow the progress of the investigation have arisen", specifically referring to two testimonies, copies of which were attached on that occasion. The Inter-American Court observes that apart from what has been pointed out regarding the lack of investigation (*supra* Having Seen paragraph No. 7) or the eventual progress thereof, no new elements which allow to consider that there is still a situation of extreme gravity and urgency endangering the personal integrity or the life of those beneficiaries have been contributed with.

9. That additionally, at the public hearing the representatives informed that the office of the present attorney of the family Ochoa y Plácido was a target for theft. The

representatives expressed that the above-mentioned attorney stated that he thought that the theft was strange, as those who broke in took away documents, a computer and memory devices. The Court observes that there were no specific arguments or elements which may link the theft to the intervention of the attorney of the family Ochoa y Plácido in the case of Digna Ochoa y Plácido. That bond does not expressly arise from the attorney statements gathered by the representatives either; in fact, according to what was mentioned at the public hearing, said attorney allegedly made reference the elements stolen from his office and his suspicion on the matter, but it was not mentioned that he related that event to the criminal investigation of the death of Digna Ochoa.

10. That at the public hearing, the State expressed that it becomes evident that after more than six years from the implementation of the provisional measures, the life or the integrity of the beneficiaries of said measures have not been threatened, nor have there been any facts which may imply that their physical integrity is at risk.

11. That, on the other hand, the State has fulfilled its duty to periodically inform the Court on the steps it has taken to implement the measures.

12. That, notwithstanding some difficulties in their implementation, the Court observes that for more than six years the State has adopted different measures to protect Pilar Noriega-García, Bárbara Zamora-López and the members of family Ochoa y Plácido, such as personal bodyguards, the set up of CCTV, escorts at working places, emergency telephones and cellular telephone services.

13. That provisional measures are exceptional in nature, they are ordered on the basis of the needs for protection and, once ordered must be maintained, provided the basic requirements of extreme gravity and urgency subsist, as well as for the prevention of irreparable damage to the rights of the people protected by them.²

14. That a reasonable time has gone by without the beneficiaries having expressed to have been the target of threats or intimidations. The Court further considers, on the one hand, that the arguments of the representatives in the sense that the criminal investigations must continue or the alleged lack of information thereof, do not constitute circumstances of extreme gravity and urgency which deserve the maintenance of the present provisional measures.³ On the other hand, the Court observes that the analysis of the effectiveness of the investigations and proceedings

² Cf. *Case of the Constitutional Court*. Provisional Measures regarding Peru. Decision of the Inter-American Court of Human Rights of March 14, 2001, Considering paragraph No. 3; *Matter of Yare I and Yare II Capital Region Penitentiary Center*. Provisional Measures regarding Venezuela. Decision of the Inter-American Court of Human Rights of November 30, 2007, Considering Paragraph No. 4; and *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures regarding Venezuela. Decision of the Inter-American Court of Human Rights of July 3, 2007, Considering Paragraph No. 7.

³ Cf. *Matter of Gallardo-Rodríguez*. Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of July 11, 2007, Considering Paragraph No. 11, and *Case of the Constitutional Court*, Provisional Measures regarding Peru; *supra* note 2, Considering Paragraph No. 4.

related to the facts which gave rise to these provisional measures would correspond to the analysis of the merits of the case by the Inter-American Commission (*supra* Having Seen paragraph No. 2).

*

* *

15. That regarding Mr. Leonel Rivero-Rodríguez and his family, the representatives have informed on the pursuits, the threats made over the telephone and the murder of two of their former bodyguards, among other facts.

16. That at the public hearing the State argued on the situation of this beneficiary, and it affirmed the following: i) with regard to the death of two of his former bodyguards: they are events without any causal relationship whatsoever with the measures ordered in favor of Mr. Rivero Rodríguez, as one of them took place while his bodyguard was off duty and the other occurred nine months after that person had ceased to act as an escort for the beneficiary; ii) with regard to the threats made over the telephone: they were made by two minors; iii) with regard to the running over: it took place within the dwelling unit where Mr. Rivero-Rodríguez used to live; it was the responsibility of one of his neighbors, about whom the authorities determined as having consumed alcohol and it was a car accident in which there were no serious injuries; iv) with regard to the pursuit that allegedly took place in 2006: it was not denounced by the beneficiary; and v) with regard to the alleged entry and search and damage to property: the investigations started in 2000, that is, a year before the ordering of provisional measures in his favor, thus being evident that they have no relation whatsoever with the case under proceedings before the Inter-American Court. The State further pointed out that the beneficiary moved and that he did not report so to the authorities, residing for almost a year in an unknown domicile, thus making it impossible to exercise the measures ordered in his favor, and that in any case his safety does not seem to have been affected during that period.

17. That at the public hearing, the representatives and Mr. Rivero-Rodríguez presented their observations to the allegations of the State and, among other arguments, they referred to: i) the lack of investigation of the facts: a) with regard to the argument by the State in the sense that the anonymous calls were made by children, the representatives read part of a forensic opinion which sets forth that the possibility that the voice belongs to a minor is rather low; and b) with regard to the investigation of other telephone calls, they read an extract of a decision in which it was stated that certain investigation measures shall be adopted and once they are carried out, "the State shall repeat the proposal for non-exercise of the criminal action", that is, the criterion for not exercising the criminal action was taken in advance, without waiting for the result of said measures. Additionally, they referred to the other facts mentioned by the State, expressing the following: ii) regarding the pursuit, they affirmed that it was denounced; that the Public Prosecutor's Office served notice upon the Republic's Attorney General and the latter failed to investigate the facts; iii) regarding the murder of his two bodyguards: in one case, it occurred hours before beginning to work, and in the other, it was the case of the bodyguard who elaborated the report on the pursuit suffered by the beneficiary; and iv) regarding the change of

domicile: it was informed in January, 2007, at the time of answering to the 30th State report.

18. That the Court considers it necessary to continue to receive information regarding the situation of Leonel Rivero-Rodríguez and his family and it shall evaluate the maintenance of the provisional measures with regard to these beneficiaries within a six-month term from the notice hereof. The State shall continue to provide the protection measures it has so far adopted and shall continue to inform the Court on this matter; the State shall further take note of the change of domicile informed by the representatives so as to provide the ordered measures in an efficient manner.

NOW THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority conferred upon it under Article 63(2) of the American Convention on Human Rights and Article 25 of the Rules of Procedure of the Court,

DECIDES:

1. To rescind the provisional measures ordered by the Inter-American Court of Human Rights in its Decisions of November 30, 2001, April 20, 2004, June 29, 2005, and November 24, 2005, with regard to Pilar Noriega-García, Bárbara Zamora-López, Eusebio Ochoa-López, Irene Alicia Plácido-Evangelista, and Carmen, Jesús, Luz María, Eusebio, Guadalupe, Ismael, Elia, Estela, Roberto, Juan Carlos, Ignacio and Agustín, all of them Ochoa y Plácido.
2. To request the State to maintain the measures necessary to protect the life and physical integrity of Leonel Rivero-Rodríguez, María de los Ángeles Espinosa-Sánchez, Augusto César Sandino Rivero-Espinosa, Luisa Amanda Rivero-Espinosa and María Katherina Rivero-Espinosa.
3. To request the State to continue to investigate the facts which gave rise to the provisional measures ordered for the benefit of the persons mentioned in operative paragraph two, so as to identify the parties responsible for them and impose the pertinent punishment.

4. To request the State to inform the beneficiaries or their representatives on the planning and implementation of the protection measures and, in general, to keep them posted on the progress of the provisional measures issued by the Inter-American Court of Human Rights.

5. To request the State to continue to inform the Inter-American Court of Human Rights, every two months as from its last report, on the provisions taken to completely fulfill what has been ordered by the Inter-American Court, and to request the representatives of the beneficiaries and the Inter-American Commission on Human Rights to present their observations to the above-mentioned reports of the State within the term of four and six weeks, respectively, from the reception of said State reports.

6. To request the Secretariat of the Court to serve notice of the instant Order upon the State, upon the Inter-American Commission and upon the representatives of the beneficiaries of the instant measures.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary