

**Order of the
Inter-American Court of Human Rights*
of April 30, 2009
Provisional Measures
regarding México
Matter of Fernández Ortega *et al.***

HAVING SEEN:

1. The brief of the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission" or "the Commission") of April 7, 2009 and its appendixes received on April 8, 2009, by means of which the Commission brought to the jurisdiction of the Inter-American Court of Human Rights (hereinafter, "the Inter-American Court", "the Court" or "the Tribunal") a request for provisional measures, in accordance with Articles 63(2) of the American Convention on Human Rights (hereinafter, "the Convention" or "the American Convention"), 26 of the Court's Rules of Procedure (hereinafter, "the Rules of Procedure") and 74 of the Commission's Rules of Procedure in order for the Mexican State (hereinafter, "México" or "the State") to protect the life and physical integrity of Obtilia Eugenio Manuel and her family; of forty-one members of the Organización del Pueblo Indígena Tlapaneco (hereinafter, "OPIT") [*Indigenous Organization of Tlapanec People* "]; of Inés Fernández Ortega and her family; of twenty-nine members of the Centro de Derechos Humanos de la Montaña Tlachinollan A.C. (hereinafter, "Tlachinollan") [*Human Rights Center of the Tlachinollan Mountain*] as well as of the next-of-kin of Mr. Raúl Lucas Lucía and Manuel Ponce Rosas.

2. The alleged facts on which the request for provisional measures filed by the Commission is based, to wit:

a) The Inter-American Commission ordered precautionary measures: i) on January 14, 2005 (MC 6-05) in favor of Obtilia Eugenio Manuel, her husband, Cuauhtémoc Ramírez Rodríguez, her daughters Kuaia Emilia and Sa'an Isabel, her son Cuauhtémoc Ramírez Manuel and her sister, Andrea Eugenio Manuel, all of them are Me' Phaa (Tlapaneco) indigenous people and members of OPIT, due to the threats, surveillance acts and harassment Obtilia Eugenio Manuel allegedly suffered because of her role in the defense of the indigenous rights in the State of Guerrero and, ii) on September 4, 2007 (MC 167-07) in favor of Inés Fernández Ortega, whose case is under the consideration of the Commission; her husband, Fortunato Prisciliano Sierra; her daughters Noemí, Ana Luz and Nérida Prisciliano Fernández and his son,

* On April 27, 2009 Judge Sergio García Ramírez, Mexican, disqualified himself from hearing the instant matter, in accordance with Articles 19 of the Statute and 20 of the Rules of Procedure of the Court, which was accepted by this Tribunal. For such reason, Judge García Ramírez did not participate in the deliberation and signature of this Order.

Colosio Prisciliano Fernández, based on the ground that Inés Fernández and her husband had been threatened, on several occasions, by informants of the Army in order to impede the search for justice in the case before the Commission. Furthermore, on June 27, 2008, the Commission expanded the precautionary measures MC 6-05 in favor of another 41 members of the OPIT,¹ after the extra-legal execution of Lorenzo Fernández Ortega due to his activism and participation in said organization and for being the brother of Inés Fernández Ortega. The Commission requested the Mexican State to adopt the necessary measures to preserve the life and physical integrity of the beneficiaries and to inform on the actions taken to investigate into the facts that gave rise to the adoption and expansion of the precautionary measures. According to what the Commission informed during the enforcement of said measures and in spite of them, the beneficiaries continued receiving threats against their lives and physical integrities and were subjected to harassment acts, which had increased in the last months;

b) As a preliminary matter, the Commission indicated that México has been increasing the presence of the Army in indigenous territories since 1994. Said situation would have caused tension and problems with the civil population and complaints about several human rights violations of the indigenous people in the state of Guerrero committed by municipal authorities or members of the police or the army. In said context, the OPIT and the Organización para el Futuro de los Pueblos Mixtecos (hereinafter, "OFPM") [*Organization for the Future of Mixteco Peoples*] were formed in the county town of Ayutla de los Libres, in order to defend the rights of the indigenous people of the area. Moreover, Tlachinollan has been with the indigenous people of Guerrero, helping in the fight for justice and respect for human rights for 14 years. These organizations carry out joint activities very frequently. According to the Commission, the facts that gave rise to the request for provisional measures would have taken place in the State of Guerrero and the potential beneficiaries of the provisional measures are, most of them, Me' Phaa (tlapanecos) and Na Savi (mixteco) indigenous people; all of them related to the OPIT, the OFPM and Tlachinollan;

c) In this context, defender Otilia Eugenio Manuel has been subjected to constant and direct harassment acts and threats against her life and physical integrity; these acts had increased in the last months, particularly between January 19 and March 20, 2009. In this sense, she received death threats by means of messages and telephone calls, she was followed by different vehicles driven by persons who appeared to be military officers; she heard gunshots on one occasion and she received warnings by state officials in relation to her safety and her role in the defense of human rights. Due to these facts, she was forced to leave Ayutla de los Libres and restrict her work as defender of the Tlapaneco indigenous people;

¹ 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 Enequina, 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.

d) The offices of OPIT were monitored by strangers. Military squads are common in the communities where the members of the OPIT live and on these occasions, the people are commonly harassed. Furthermore, some members of said organization, who would have been imprisoned, mentioned being afraid for their lives. According to what the Commission informed "in the community where they live, El Camalote, it is rumored that there are people who [...] 'are waiting to kill them'";

e) The situation of vulnerability of Inés Fernández Ortega and her family is evident after the harassment acts of the military officers in the community; specially, if serious consideration is given to the fact that her case before the Commission, in which it was alleged she was sexually assaulted by members of the Mexican Army, is at a very late procedural phase. The Commission mentioned that on February 3, 2009 Fortunato Prisciliano Sierra, husband of Inés Fernández Ortega, saw almost fifty military offices, carrying long weapons, looking for something in a plot of land of his property. He then decided, together with this family, to shut themselves in their house during that day, for fear they could be arrested or questioned by the military officers. On the next day, Fortunato Prisciliano verified that the military officers had caused some damage to the property and stole part of the crop. The Commission pointed out that, according to the representatives, the presence of the military officers in the area represents an act of intimidation for Inés Fernández Ortega and her husband, as well as for other members and leaders of indigenous organizations;

f) On February 13, 2009, two Mixteco indigenous leaders of the state of Guerrero, Raúl Lucas Lucía and Manuel Ponce Rosas, were arrested by three people who said to be police officers and on February 20, that same year, their bodies were found with alleged marks of torture. Mr. Raúl Lucas Lucía and Manuel Ponce Rosas were leaders of OFPM, through which they worked in activities together with the beneficiaries of the precautionary measures ordered by the Commission. After their disappearances, their next-of-kin would have been harassed and had received threatens in person and via telephone calls by state agents and strangers in order to stop searching for justice. The state government has not conducted a serious, independent and effective investigation into the facts of the disappearance and execution of Raúl Lucas Lucía and Manuel Ponce Rosas; therefore, this fact places the next-of-kin and the other defenders in a situation of extreme vulnerability. According to the statements made by the representatives, the Commission pointed out that the defects in the investigation had been so evident that even the National Congress urged the Office of the Attorney General of the Republic to take up the case and carry out an autonomous investigation to allow the next-of-kin having access to justice, and

g) The Tlachinollan organization, co petitioner in the case of Inés Fernández Ortega before the Inter-American Commission, would have been subjected to public defamatory remarks made by civil and military authorities in the state of Guerrero. It is even more serious that between January 16 and March 20, 2009, some members of the Tlachinollan would have been threatened; specially, when Obtilia Eugenio Manuel had had some contact with them; and that their telephones were intercepted. On another occasion, on February 15, 2009, the husband of Inés Fernández Ortega was questioned about the members of Tlachinollan. Moreover, Obtilia Eugenio Manuel would have received telephone calls in which she was questioned, in an intimidating way, about the names of the attorneys of said organization. In addition, within the framework of the facts related to the disappearance and execution of Raúl Lucas Lucía and Manuel Ponce Rosas, Tlachinollan became the representative of their

families at the domestic and international level. In March 2009, Tlachinollan and the Center for Justice and International Law requested the expansion of the precautionary measures ordered in favor of Otilia Eugenio Manuel and members of the OPIT (MC 6-05), in order to include the 29 members of Tlachinollan,² due to the situation of extreme risk they were facing.

3. The legal arguments of the Commission to base the request for provisional measures, in which it pointed out that:

a) up to date, the Mexican State has not adequately or effectively implemented the measures necessary to protect the life and integrity of the beneficiaries of the precautionary measures, and it has not acted with total diligence in relation to the duty to investigate into the facts that gave rise to the measures. In spite of the enforcement of the precautionary measures, the threats and the attacks against the life and physical integrity of the beneficiaries had increased in the last months and had directly affected other human rights defenders and their families, that is, the members of Tlachinollan and the next-of-kin of Raúl Lucas Lucía and Manuel Ponce Rosas, who were not protected by the precautionary measures, but who are directly related to the beneficiaries of such measures. In relation to such people, the representatives requested, in time fashion, protective measures in their favor and, upon verifying the situation of extreme gravity and urgency, the Commission decided to include them in the request for provisional measures instead of ordering precautionary measures in their favor;

b) Coupled with the death threats and the pursuit of human rights defenders and their families, there would be statements made by civil and military public officers, as well as from people near them that, following a pattern of harassment against such defenders, discredit their work by calling them liars or by connecting them to alleged drug-trafficking activities. The role of the defenders is limited by the dissemination of these speeches, which discredit their jobs and generate or affect a context unfavorable to the defense of human rights. Furthermore, as a consequence of the facts above mentioned, the potential beneficiaries of these provisional measures so requested were forced to modify their lives, in order to reduce, where possible, the risk of suffering irreparable damage to their lives and physical integrities; and

c) The extreme gravity and urgency is evidenced by the disappearance and death of two human rights defenders of the area and the serious threats against the people in whose favor provisional measures are requested. In addition, the nature of the legal interests threatened, the right to life and physical integrity, as well as the capacity to continue defending the human rights of the people in respect of whom provisional measures are requested, constitute the matter of irreparability of the consequences that this request for provisional measures intends to avoid.

² Abel Barrera Hernández, Alejandra González Marín, Alejandro Ramos Gallegos, Armando Campos Ochoa, Claudia Ordóñez Viquez, Dionicio Villano González, Epifanía Ramírez Arias, Eulogia Flores Vázquez, Gabino Santiago Jiménez, Isauro Romero Solano, Isidoro Vicario Aguilar, Jane Eva Jones, Laura Lizette Aragón Castro, Margarita Nemecio Nemesio, Mario Patrón Sánchez, Matilde Pérez Romero, Neil Arias Vitinio, Odilia Alatorre Villavicencio, Olivia Arce Bautista, Patricia Bordier Morteo, Paulino Rodríguez Reyes, Prometeo Rodríguez Lucero, Roberto Gamboa Vázquez, Rommel Cain Chacan Pale, Teresa de la Cruz de la Cruz and Vidulfo Rosales Sierra. People who normally worked in Tlachinollan- Ayutla: Fidela Hernández Vargas, Juan Castro Castro and Rogelio Téliz García.

4. The request of the Inter-American Commission for the Court, based on Article 63(2) of the American Convention, to request the State to adopt the following measures in relation to the people included in its brief:

- a) Adopt, forthwith, all the measures that are necessary to guarantee the life and personal integrity of the beneficiaries and by mutual agreement with the beneficiaries and their representatives;
- b) Adopt forthwith all the measures necessary so that Mrs. Obtilia Eugenia Manuel and the members of the OPIT and of Tlachinollan are able to continue with the work of promoting and defending the human rights in Guerrero;
- c) Agree with the beneficiaries on the more appropriate mechanisms for the implementation of the protective measures, in such a way as to ensure their effectiveness and relevancy;
- d) Conduct an investigation into the facts that gave rise to the request for provisional measures as a preventive mechanism to impede the occurrence of new threats or possible attacks; and
- e) Inform on the actions taken in order to shed light on the origin of the threats against the life and physical integrity of the beneficiaries that justify the invocation of Article 63(2) of the American Convention.

5. The brief of April 9, 2009 and its appendix, by which the Inter-American Commission forwarded the copy of a "minutes of a work meeting with officers of different governmental departments and representatives of the 'Tlachinollan' Center", meeting that was held on April 3, 2009. The Commission "valu[ed] the will of the State as well as the agreements entered into with the parties present in said meeting. Nevertheless, the Commission consider[ed] that, in the first place, said agreement did not include all the beneficiaries in respect of whom the provisional measures were requested and that, in the second place, said measures were not enough or appropriate to terminate the extreme gravity, urgency and imminent risk of the situation all of them lived".

6. The Order of the President of the Court of April 9, 2009 (hereinafter, "the President's Order") by which it was decided:

1. To order the State to maintain the measures it was implementing, as well as to adopt, forthwith, the additional measures necessary to protect the life and integrity of the [...] people [identified in the request of the Inter-American Commission], taking into account the seriousness of the situation and the particular circumstances of risk [...].
2. To call upon the State to take all steps as may be necessary in order for the measures of protection ordered in the [...] Order to be devised and implemented with the participation of the beneficiaries of such measures or their representatives so as to be diligently and effectively provided and to, in general terms, keep them informed on the progress made in its enforcement.
3. To call upon the State to inform the Inter-American Court of Human Rights, no later than April 17, 2008, on the measures it has adopted in compliance with the [...] Order.
4. To request the beneficiaries of these measures or their representatives to present to the Inter-American Court of Human Rights, within the term of five days, as of notice of the State's report, the comments they deem relevant.

5. To request the Inter-American Commission on Human Rights to present to the Inter-American Court of Human Rights, within the term of seven days, as of notice of the State's report, the comments it deem relevant.
6. To order that this matter be known by the full Court in the XXXIX Period of Extraordinary Sessions to be held on April 27 to 30, 2009, in the city of Santiago, Republic of Chile.
7. The communications of April 9, 20, 24 and 30, 2009 by means of which the Secretariat of the Inter-American Court (hereinafter, the "Secretariat") following the instructions of the President of the Tribunal, among other actions: i) notified the Order for urgent measures adopted on April 9, 2009 to the State and the Commission; ii) transmitted the State's report (*infra* Having Seen clause 8) to the Inter-American Commission and the representatives of the beneficiaries (hereinafter, "the representatives"); iii) transmitted the comments of the representatives to the State and the Commission and iv) requested the representatives to elucidate the brief of April 24, 2009.
8. The briefs received via facsimile on April 20 and 24, 2009 and the appendixes thereto, by means of which the State forwarded information in relation to the implementation of the urgent measures ordered by the President; specially, in relation to the meetings held on April 16 and 23, 2009 between the state authorities and the representatives of the beneficiaries.
9. The briefs of April 23 and 24, 2009 by which the representatives submitted, respectively, "general considerations and comments to the document presented by the Mexican State" of April 20, 2009 and additional information.
10. The briefs of April 17 and 24, 2009 by means of which the Inter-American Commission forwarded the address of the beneficiaries' representatives and its comments to the State's report of April 20, 2009 and the representatives' brief of April 23, 2009.

CONSIDERING:

1. That México has been a State Party to the American Convention since March 24, 1981 and, in accordance with Article 62 thereof, has accepted the binding jurisdiction of the Court on December 16, 1998.
2. That Article 63(2) of the American Convention establishes that, "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission".
3. That under the terms of Article 62 of the Court's Rules of Procedure:
 1. At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.
 2. With respect to a matter not yet submitted to the Court, it may act at the request of the Commission.

[...]

4. That Article 1(1) of the Convention establishes the general obligations of the State Parties to respect the rights and freedoms therein enshrined and to ensure the full and free exercise of those rights and freedoms to every person subject to jurisdiction; such obligations are binding not only on States but also on third parties.³

5. That according to the International Human Rights Law, the provisional measures are not only precautionary in the sense that they preserve a legal situation, but they are also mainly protective since they protect human rights, insofar as they avoid irreparable damage to people. Provisional measures are adopted provided the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met. In this sense, provisional measures become a real jurisdictional guarantee of a preventive nature.⁴

6. That according to the provision established in Article 63(2) of the Convention, provisional measures ordered by the Court are binding on the State in conformity to a basic principle of the law of international responsibility of the States, as supported by international case law, under which States are required to comply with international treaty obligations in good faith (*pacta sunt servanda*).⁵

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7. That the instant request for provisional measures does not derive from a case subjected to the consideration of the Court; otherwise, these measures were requested in a context of a petition pending before the Inter-American Commission. In fact, in said request, the Commission informed that the beneficiaries of the precautionary measures are "directly or indirectly related to the case of Inés Fernández Ortega (Case 12.580)", according to which, on October 30, 2008 the Commission adopted the Report on Merits in accordance with Article 50 of the American Convention.

8. That from the information forwarded by the Commission it springs that, in spite of the precautionary measures ordered from the year 2005 onwards (*supra* Having Seen clause 2), there would be "alleged threats and acts of violence" leading to a situation of extreme gravity and urgency and of possible irreparability of damage to the right of life and physical integrity of the beneficiaries. In addition, according to the request for provisional measures

³ Cf. *Case of Velásquez Rodríguez*. Provisional Measures Regarding Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, Considering Clause three; *Case of Kawas Fernández*. Provisional Measures Regarding Honduras. Order of the Inter-American Court of Human Rights of November 29, 2008; Considering Clause four; and *Matter of Carlos Nieto Palma et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights, of January 26, 2009; Considering clause twenty-two.

⁴ Cf. *Case of Herrera Ulloa*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001; Considering Clause four; *Case of López Álvarez*. Provisional Measures Regarding Honduras. Order of the Inter-American Court of Human Rights of January 26, 2009, Considering Clause three; *Case of Bámaca Velásquez*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of January 27, 2009, Considering Clause forty-five.

⁵ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998; Considering Clause six; *Case of Mack Chang et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of January 26, 2009, considering clause three; and *Matter of "El Nacional" and "Así es la Noticia" Newspapers*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 25, 2008, Considering Clause two.

"the alleged attacks against indigenous defenders, even against the beneficiaries of the precautionary measures, have increased in the last months". The Court notes that during the first months of 2009, many acts of threats, surveillance, telephone interceptions, among other things, occurred regarding the beneficiaries of the precautionary measures as well as other persons connected to them, facts that seem to be related to their role in the defense of indigenous rights and to the complaints for human rights violations filed by said persons. Moreover, the Court observes the seriousness of the information provided for by the Commission about the alleged forced disappearance and subsequent discovery of the bodies of Mr. Raúl Lucas Lucía and Manuel Ponce Rosas (*supra* Having Seen clause 2(f)), leaders of an organization of Guerrero engaged in the defense of indigenous rights, who, according to what was informed, would work in activities together with the beneficiaries of the precautionary measures ordered by the Commission.

9. That the Court takes note of what was informed by the State, the representatives and the Inter-American Commission in relation to the meetings held on April 3, 16 and 23, 2009 between the State's officers and the representatives.

10. That the Court notes that the meeting of April 16, 2009 was held in order to jointly agree on the implementation of the measures stipulated in the Order of the Court's President of April 9, 2009 and, among other aspects, the parties agreed to: i) review the progress of the agreements contained in the last minutes of the meeting of April 3, 2009; ii) analyze in the next meeting, the progress made in the investigation into the murder of Lorenzo Fernández Ortega; iii) deliver a copy of the official letter by means of which the Government Secretariat of Guerrero requested the President of the Superior Tribunal of Justice of such entity to carry out a meeting with the beneficiaries and agree on new actions for that meeting to take place; iv) repeat their commitment to deliver and install communication equipments; v) deliver the beneficiaries documents vouching for the provision of food, medicine and water to one of the beneficiaries, inmate in a detention center of Ayutla de los Libres, as well as the copy of a report presented by the General Director of the Penitentiary System before the Commission for the Defense of Human Rights of Guerrero; vi) delivery of a simple copy of all and each of the record that form part of the preliminary inquiry conducted by the Attorney General's Office of Guerrero for the crime of threats against Otilia Eugenio Manuel, once said person renders her statement and vii) convene the beneficiaries, within a maximum term of five days, to give a precise response to the proposal of protective measures requested by them in the brief of April 16, 2009 presented in the meeting.

11. That in the brief of comments, the Commission referred to the meeting of April 16, 2009 and, in summary, expressed its concern about the fact that the "State has not only failed to implement the measure to protect the beneficiaries of the urgent measures, but also it has failed to fully comply with the agreements entered into on April 3, 2009. By postponing protecting the beneficiaries, the beneficiaries continue to be in the same situation of extreme gravity, urgency and imminent damage they were in the past, and the State keeps failing to adopt the measures necessary to change that situation". The Commission requested the Court to ratify the decision of the President of April 9, 2009.

12. That the representatives provided more information on the facts that gave rise to the request for provisional measures and stated their opinion about the protective measures they requested to the State at that moment, and about the meeting of April 16, 2009. In this regard, they pointed out that:

- a) In relation to the precautionary measures MC 06-05 ordered in favor of Otilia Eugenio Manuel and her family, the petitioners have requested the State specific

measures, such as: i) Two satellite phones, which would allow the members of the OPIT to communicate before possible threats; ii) a system of sensory lighting to be installed outside the house of the beneficiaries, which is also the headquarters of OPIT, apart from a system of interphone or bell with a camera; iii) police patrolling that will pass in front of the beneficiaries' house at least, twice a week and iv) the investigation into the threats committed against the beneficiaries. In response, the State would have stated it had no resources to provide the telephonic equipments; that it undertook to conduct a police patrolling every week by means of the Preventive Federal Police and that it would consult the possibility for the state preventive police to conduct another weekly round; that it would request the set of sensory lights and the interphone or bell with a camera to the Secretary of Public Security of Guerrero and that it would make an appointment with the Delegate of the Attorney General's Office of Guerrero in order to present the respective complaint. As a consequence, the State started to patrolling once a week, but this was later on suspended; after the complaint made by the beneficiaries, preliminary inquiries were conducted regarding the threats committed against them and up to date, there is no information about the progress of said proceedings; the set of sensory lights and bell requested have been delivered, but the operation of the camera was defective since the monitor did not show very clear images. Then, the bell and the lights broke down and the State refused to repair them on the ground that it had already complied with the obligation to provide them and that it was up to the beneficiaries fix it; the State did not provide new equipments.

- b) In the meeting held on October 4, 2007 within the framework of the precautionary measures MC 167-07 ordered in favor of Inés Fernández Ortega and her next-of-kin, the State undertook to deliver five radio communication equipments to the beneficiaries and to expedite the investigations conducted in relation to the threats and attacks suffered by Fortunato Prisciliano Sierra. The commitment to provide the communication equipments was repeated by the State in the meeting held on July 22, 2008 within the framework of the expansion of the precautionary measures MC 06-05 ordered in favor of the members of the OPIT. The beneficiaries are still waiting for the equipments. In the last meeting mentioned, the State also undertook to remove the investigations into the acts committed against members of the OPIT, even the murder of Lorenzo Fernández Ortega, from the Office of the Public Prosecutor of the Judicial District of Allende to the competent organs of the Attorney General's Office of the state of Guerrero. Nevertheless, up to the present, there is no information about the measures adopted by the State to implement the removal of the proceedings and no progress has been made in such proceedings. Regarding the investigations into the threats and attacks committed against Inés Fernández Ortega and Fortunato Prisciliano Sierra, despite the fact the two perpetrators have been identified and that a criminal action for such crimes has been instituted, the accused remain free and there is no information on the progress of the proceeding. In addition, one of the accused continue committing acts of harassment against Otilia Eugenio Manuel, and
- c) In the meeting held by the State on April 16, 2009, after the urgent measures ordered by the President's Tribunal, the proposals of the beneficiaries were not considered. The representatives of the State asserted that they were unable to enter into an agreement due to the absence of the officers who could give a response to the problems put forward by the beneficiaries. There was no answer either as to the progress of the investigations into the facts that gave rise to the instant measures. The Mexican State has unilaterally decided to postpone the implementation of the measures until the next meeting, in spite of the fact that such attitude, considering

the serious situation of risk the beneficiaries were in, could represent an irreparable damage to their life or physical integrity. Finally, the representatives delivered a document with a series of measures that, according to them, the State must adopt.

13. That in accordance with what was informed by the State in the second meeting held on April 23, 2009 to monitor the urgent measures ordered by the Tribunal's President, the Government Secretary delivered a document containing a program to consider every and each one of the requests made by the beneficiaries in response to the brief delivered on April 16, 2009 (*supra* Considering clauses 10 and 12)). The State expressed being totally available to comply with what was ordered; nevertheless, due to the "[lack of] administrative capacity to implement the measures requested by the beneficiaries, viable alternatives were presented to guarantee life and physical integrity of all the beneficiaries. However, the beneficiaries did not accept those alternatives, since, according to their opinion, the answer from the Mexican government denies more than 90% of the request made, matter that the Mexican state does not accept and considers inadmissible". The State mentioned that it has considered several requests of the beneficiaries, among them: a) it brought to the attention of the Secretary of Public Security, the Secretary of National Defense and of the authorities of the municipality of Ayutla de los Libres that provisional measures were ordered in favor of the beneficiaries; b) it visited, on April 21, 2009, the Center for Social Readaptation of Ayutla de los Libres to verify the health and arrest conditions of one of the beneficiaries; it informed that, according to the Secretary of National Defense, there is no personnel deployed in the indigenous areas of Me'phaa and Na Savi and d) during the meeting of April 23, 2009, the State delivered two satellite radios, which were not accepted by the beneficiaries. Lastly, it informed that the beneficiaries "left the meeting without coming to an understanding" in total disagreement with the State and it emphasized that the dialogue between the authorities and the beneficiaries is essential.

14. That the standard of *prima facie* assessment of a case and the application of presumptions due to the need for protection have, on different occasions, led this President and the Court to order measures.⁶

15. That the information presented by the Commission, the representatives and the State (*supra* Considering clauses 8 to 13 proves, *prima facie*, that the people mentioned by the Inter-American Commission in its request for provisional measures and in the President's Order would be in a situation of extreme gravity and urgency, since their lives and physical integrity would be threatened and in serious danger. As a result, the Inter-American Court deems it is necessary to protect said people by means of provisional measures, in light of the terms of the American Convention.

16. That, as this Court has held on several occasions, that the State is particularly obliged to protect those who work in non-governmental organizations, as well as other groups or individuals who work to defend human rights, for their work constitutes a positive and supplementary contribution to the endeavors undertaken by the State in its role of guarantor of the rights of the people living within its jurisdiction.

⁶ Cf. *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 9, 2006, considering clause twenty-two; *Case of Adrian Meléndez Quijano et al.* Provisional Measures regarding El Salvador Order of the Inter-American Court of Human Rights of May 12, 2007; Considering Clause eleven; *Case of Mack Chang et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights, of January 26, 2009; Considering clause thirty-two.

17. That the State should make all the pertinent arrangements to ensure that the provisional measures ordered in this Order are planned and implemented with the participation of the beneficiaries of the measures, or with their representatives, to ensure that the measures are provided in a diligent and effective manner. The Court verifies that the positive participation of the State and particularly, of the representatives is essential in order to coordinate the implementation of the provisional measures in the instant matter.

18. That the Tribunal deems appropriate to recall that, before a request for provisional measures, the Court needs to consider only those arguments which relate strictly to the extreme gravity and urgency and the necessity to avoid irreparable damage to persons. Such other issues are properly brought before the Court only through contentious cases.⁷

19. That, furthermore, the adoption of provisional measures will not imply a decision on the merits of the existing controversy between the beneficiaries the State and⁸ should the case, finally, be brought to the Court's attention and it will neither prejudge the state responsibility for the facts reported. In ordering provisional measures, the Tribunal is only exercising its powers under the Convention, in cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons.⁹

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority granted by Article 63(2) of the American Convention on Human Rights and Articles 26 and 30 of its Rules of Procedure,¹⁰

DECIDES:

⁷ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights, of August 29, 1998. Considering clause six; *Matter of the Rodeo I and Rodeo II Capital Judicial Confinement Center.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 8, 2008; Considering Clause ten; and *Matter of Carlos Nieto Palma et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights, of January 26, 2009; Considering clause twenty-two.

⁸ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of May 27, 1998; considering clause seven; *Case of Kawas Fernández, supra* note 4; considering clause five; and *Matter of Tyrone Da Costa Cadogan.* Provisional Measures regarding Barbados. Order of the Inter-American Court of Human Rights of December 2, 2008; Considering Clause eleven.

⁹ Cf. *Matter of James et al., supra* note 7, considering clause seven; *Matter of Monagas Judicial Confinement Center ("La Pica"),* Provisional Measures regarding Venezuela. Order of the President of the Inter-American Court of Human Rights of July 3, 2007; considering clause six; and *Case of Kawas Fernández, supra* note 4, considering clause five.

¹⁰ Rules of Procedure approved by the Court during its XLIX Period of Ordinary Sessions, held from November 16 to 25, 2000 and partially amended during the LXXXII Period of Ordinary Sessions, held from January 19 to 31, 2009, in accordance with Articles 71 and 72 thereof.

1. To ratify in all its terms the Order of the President of the Inter-American Court of Human Rights of April 9, 2009 and, therefore, request the State to maintain the measures it was implementing, as well as to adopt, forthwith the additional measures that are necessary to preserve the life and physical integrity of the following people, taking into account the seriousness of the situation and the particular circumstances of risk:

- a) Otilia Eugenio Manuel, her husband Cuauhtémoc Ramírez Rodríguez, her daughters Kuaia Emilia and Sa'an Isabel Ramírez Manuel and her son, Cuauhtémoc Ramírez Manuel, and her sister, Andrea Eugenio Manuel;
- b) Inés Fernández Ortega; her husband, Fortunato Prisciliano Sierra, as well as her daughters Noemí, Ana Luz and Nérida Prisciliano Fernández, and her son Colosio Prisciliano Fernández;
- c) The 41 members of *Organización del Pueblo Indígena Tlapaneco*; 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;
- d) The 29 members of *Organización de la Montaña Tlachinollan*: Abel Barrera Hernández, Alejandra González Marín, Alejandro Ramos Gallegos, Armando Campos Ochoa, Claudia Ordóñez Viquez, Dionicio Villano González, Epifania Ramírez Arias, Eulogia Flores Vázquez, Fidela Hernández Vargas, Gabino Santiago Jiménez, Isauro Romero Solano, Isidoro Vicario Aguilar, Jane Eva Jones, Juan Castro Castro, Laura Lizette Aragón Castro, Margarita Nemecio Nemesio, Mario Patrón Sánchez, Matilde Pérez Romero, Neil Arias Vitinio, Odilia Alatorre Villavicencio, Olivia Arce Bautista, Patricia Bordier Morteo, Paulino Rodríguez Reyes, Prometeo Rodríguez Lucero, Roberto Gamboa Vázquez, Rogelio Téliz García, Rommel Cain Chacan Pale, Teresa de la Cruz de la Cruz and Vidulfo Rosales Sierra, and
- e) The next-of-kin of Raúl Lucas Castro 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 Catarin, Aurelio García de los Santos, Cándida García Rufina, Santiago Ponce Lola and Maximino García Catarino.

2. To call upon the State to take all steps as may be necessary in order for the measures of protection ordered in the instant Order to be devised and implemented with the participation of the beneficiaries of such measures or their representatives so as to be diligently and effectively provided and to, in general terms, keep them informed on the progress made in its enforcement.

3. To call upon the State to continue informing the Inter-American Court of Human Rights, every two months, as of notice of this Order, on the provisional measures adopted in accordance with this decision.

4. To call upon the representatives of the beneficiaries of the provisional measures and the Inter-American Commission on Human Rights to submit their comments within the term of four and six months, respectively, as of notice of the State's reports mentioned in the above operative paragraph.

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

Cecilia Medina Quiroga
President

Diego García-Sayán

Manuel Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary