

**Order of the
Inter-American Court of Human Rights
of February 2, 2010
Provisional Measures regarding Mexico
Matter of Rosendo Cantú *et al.***

HAVING SEEN:

1. The Order issued by the then-President (hereinafter "the President") of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court" or "the Tribunal") on April 9, 2009, by which it required the United Mexican States (hereinafter "Mexico" or "the State") to immediately adopt the measures that were necessary to protect the life and personal integrity of Obtilia Eugenio Manuel and certain next of kin; of Inés Fernández Ortega and certain next of kin, of 41 members of the Tlapaneco Indigenous People Organization and of 29 members of the Montaña Tlachinollan Organization, and the next of kin of Raúl Lucas Castro and Manuel Ponce Rosas, in the case of Fernandez Ortega *et al.*

2. The Order issued by the Tribunal on April 30, 2009, by which it ratified the Order of the President of the Inter-American Court of April 9, 2009.

3. The brief of December 18, 2009, and its appendixes, by which the Tlapaneco Indigenous People Organization A. C. (OPIT), the Center for Human Rights of the Montaña Tlachinollan, A. C. (Tlachinollan) and the Center for Justice and International Law (CEJIL) (all together hereinafter "the representatives"), submitted to the Inter-American Court a request for the extension of the provisional measures in the procedure related with the Inés Fernández Ortega *et al.* case, in conformity with Article 63 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Article 26 of the Rules of the Court then in force, with the purpose of Mexico protecting the life and personal integrity of Valentina Rosendo Cantú and her daughter Yenis Bernardino Rosendo.

4. The alleged facts upon which the request for provisional measures was based presented by the representatives, namely:

a) Valentina Rosendo Cantú (hereinafter also "Ms. Rosendo") and her daughter, Yenis Bernardino Rosendo, live alone in the city of Chilpancingo (the capital of the state of Guerrero) far from their community, "as a consequence of the [alleged] sexual violation suffered by [the first] at the hands of the military;"

b) On October 12, 2009, when Ms. Rosendo left her work, she noticed a man in the sidewalk in front observing the house from which she had left and he followed her. When she stopped in a store, such person continued watching her, so she chose to return to the house where she worked. Four hours later, when she again left for her home, Ms. Rosendo noticed the presence of the same person that had been

watching her. Due to "[t]hese facts, caused her a grave fear," she returned to her work-place. She communicated with a next of kin for him to accompany her, and as she left her work-place, she noticed that "the man was still outside" and he photographed her with a cell phone. The following morning, when Ms. Rosendo left her other job, "the person that had been watching her" the day before was outside the house. Consequently, on November 17, 2009, Ms. Rosendo brought a complain for the offense of threats, for which the prior investigation GRO/SC/125/2009 was begun;

c) On December 11, 2009, at approximately 6:20 pm, Ms. Rosendo went to pick up her daughter Yenis Bernardino from the school where she studied and a few meters before arriving, her daughter "left running with her backpack on her back, crying and very upset," because two men that had tried to take her away, had stolen her cell phone. For this, the aforementioned inquiry incorporated the new criminal facts against Ms. Rosendo and her daughter for the offense of threats, robbery, minors or disabled persons abduction, and child abduction.

d) On February 13, 2009, "in the framework of the disappearance of Raúl Lucas Lucía and Manuel Ponce Flores, as well as of the aggressions committed against Obtilia Eugenio, Ms. Rosendo informed her representatives "that she identified two persons that were watching her and following her from her house to her work." She added that Ms. Rosendo "could recognize that one of the persons watching her [had] been identifie[d] as an assistant of the Army." The next of kin of Ms. Rosendo, who are in another community, had manifested her that they fear for her life, because in such place "information exists that members of the Army, which are connected with other members of the community, are in Chilpancingo with the objective of following her."

5. The arguments of the representatives to support their request for measures of protection, among which they provided that:

a) "the facts are grave attempts against life, security, and tranquility of Valentina [Rosendo Cantu] and her daughter" and occurred in a context of the re-activation of the case of Ms. Rosendo before the Tribunal, "for which a well-founded fear exists that reprisals may be taken against her or against her family,"

b) Ms. Rosendo and her daughter do not have on a security measure that allows them to be protected. As a result of the sexual violation and the work that she initiated to denounce it on an internal and international level, Ms. Rosendo "was obligated to radically change her life and to reside in the city of Chilpancingo, where she does not have social networks of support." Initially, they estimated that the change of city was a measure to give her protection, nevertheless "[the] response and [the] measures of protection towards her were slower" when provided by the representatives, since Tlachinollan is located 4 and a half hours of distance by vehicle from Chilpancingo;

c) The facts suffered by Ms. Rosendo and her daughter are similar to those that were denounced by the beneficiaries of the related provisional measures in the case of Fernández Ortega *et al.*, namely "following and the taking of photos by persons

with similar profiles and complexion; incidents of robbery to close next of kin [and] threats," and

d) The situation of extreme gravity and urgency is manifested in that since 2002, the year in which the facts occurred, to the present date, the investigations had not advanced. They affirmed that "[t]he impunity for the authors of these acts leads to repetition and worsening of the acts against the beneficiaries." Additionally, said situation "is directly linked with the work of denounce that [Ms. Rosendo] has made in relation to her case, whose pattern and context have much in common with the case of Inés Fernández [Ortega]."

6. The Order of the President of the Tribunal of December 23, 2009, through which it resolved, *inter alia*:

1. To dismiss the request for extension of the provisional measures, according to that indicated in the eighth Considering paragraph of the [...] Order.

2. To require the State to inform the Inter-American Court of Human Rights, no later than January 8, 2010, about the situation of extreme gravity and urgency of Ms. Valentina Rosendo Cantú and her daughter Yenis Bernardino Rosendo, within the case of Rosendo Cantú v. México.

7. The brief of January 5, 2010, through which the State requested "an extension of 15 days to complete the report regarding the situation" of Valentina Rosendo Cantú and Yenis Bernardino Rosendo requested by the President.

8. The communications of January 7 and 21, 2010, through which the Secretary of the Inter-American Court (hereinafter "the Secretary"), following the instructions of the President of the Tribunal, respectively: a) granted an extension to the State until January 15, 2010, to present said report, and b) reminded the State that, at the expiration of the extension granted, the mentioned report had not been received, for which the Secretary requested its submission as soon as possible.

9. The brief of January 26, 2010, through which the State presented information about the alleged situation of extreme gravity and urgency of Valentina Rosendo Cantú and Yenis Bernardino Rosendo.

CONSIDERING:

1. That Mexico is a State Party to the American Convention since March 24, 1981, and, according to Article 62 of the Convention, recognized the adjudicatory jurisdiction of the Court on December 16, 1998.

2. That Article 63(2) of the American Convention provides 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. Article 27 of the Rules of the Court¹ provides:

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.

[...]

3. In contentious cases already submitted to the Court, the victims or alleged victims or their duly accredited representatives, may present directly to the Court a request for provisional measures in relation to the object of the case.

[...]

4. That Article 1(1) of the Convention establishes the general obligations of the State Parties to respect the rights and liberties protected in it and to guarantee their free and full exercise to each person that is subject to its jurisdiction, which are imposed not only in relation to the power of the State but also in relation with the actions of third persons.²

5. That under International Human Rights law, provisional measures are not only precautionary, in the sense of preserving a juridical situation; they are also safeguards inasmuch as they protect human rights. When the requisite basic conditions of extreme gravity and urgency are present and when necessary to prevent irreparable harm to persons, provisional measures become a true jurisdictional guarantee that is preventive in nature.³

6. That the regulation established in Article 63(2) of the Convention confers an obligatory character to the adoption, on the part of the State, of the provisional measures that this Tribunal orders, so that according to the basic principle of the law of international responsibility of the State, supported by international jurisprudence, the States must comply with their convention obligations in good faith (*pacta sunt servanda*).⁴

¹ Rules of Procedure the Court approved in the LXXXV Ordinary Period of Sessions, held November 16-28, 2009.

² Cf. *Case of Velásquez Rodríguez*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, Considering third; *Case of the Rochela Massacre*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of November 19, 2009, Considering fourth, and *Matter of Guerrero Larez*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering thirteenth.

³ Cf. *Case of Herrera Ulloa*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering fourth; *Matters of Matter of Monagas Judicial Confinement Center ("La Pica")*; *Matter of Yare I and Yare II Capital Region Penitentiary Center*; *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*, and *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering sixth and *Matter of Guerrero Larez*, *supra* note 2, Considering fourth.

⁴ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court on Human Rights of June 14, 1998, Considering sixth; *Matter of the Communities of Jiguamiandó*

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7. That the request for amplification of provisional measures in favor of Ms. Rosendo and her daughter was denied in the framework of the case of Fernández Ortega *et al.* Nevertheless, the Court observes that, just as signaled by the President in the Order of December 23, 2009,⁵ that the beneficiaries of the provisional measures correspond to the presumed victims of the case of Rosendo Cantú *et al.*, for which the facts and arguments shown by the representatives in their brief, as well as the information presented by the State, will be analyzed in the present case.

8. That of the information supplied by the representatives, it follows that Ms. Rosendo and her daughter, due to the sexual violation that Ms. Rosendo suffered, have moved from the city and are living far from their family. In such location, Ms. Rosendo has been the object of followings from her two places of work and photographed on one of these occasions by one same person of "military appearance;" previously, two unknown persons had tried to deprive the child of Ms. Rosendo of her liberty and had robbed her cell phone. These facts have been put into the knowledge of the Public Ministry and a prior inquiry has been begun (*supra* Having Seen 4).

9. That the State transmitted to this Tribunal "the information obtained by the Secretary of the Interior, the institution responsible for implementing and monitoring the provisional [...] measures." Of the information submitted, it follows that:

a) for the General Director of International Cooperation of the Attorney General of the Republic, "the requirements of gravity and urgency are not fulfilled, elements which are necessary for the implementation of provisional measures," given that "there is no background of this facts regarding whether they have been denounced before the Agent of the Public Ministry of the Federation, given that [...] the facts referred to were made to the knowledge of the Agent of the Public Ministry of the Common Jurisdiction in the state of Guerrero;"

b) the Special Prosecutor for the Protection of Human Rights of the Attorney General of Justice of the State of Guerrero indicated that on November 17, 2009, it began the prior inquiry GRO/SC/125/2009 for the offense of threats against Ms. Rosendo Cantu, "in which the Ministry attest[ed] to the accuracy of the initiative and the brief of the accusation, the ratification of the brief of the claim by [the offended party] and the declaration of [a] witness." Also, on December 15, 2009, Ms. Rosendo Cantu extended the claim "for new criminal facts against her minor daughter [...] which took place on December 11, 2009, but to this date, the brief has not been ratified by the offended party," and

and Curbaradó. Provisional Measures regarding Colombia. Order of the Inter-American Court on Human Rights of November 17, 2009, Considering fourth, and Matter *Guerrero Larez*, *supra* note 2, Considering fifth.

⁵ Cf. *Matter of Fernández Ortega et al.* Provisional Measures regarding México. Order of the President of the Inter-American Court on Human Rights of December 23, 2009, Considering ninth.

c) the person in charge of the Police Station of Sector 41-XII Chilapancingo of the State of Guerrero manifested that “no request for help [...] nor any incident by the part of [Ms. Rosendo and her daughter] has been received or registered.”

10. That Article 63(2) of the Convention demands that for the Court to provide provisional measures, three conditions must coincide: i) “extreme gravity,” ii) “urgency,” and iii) and to “avoid irreparable damage to persons.” These three conditions are co-existent and must be present in every situation in which the intervention of the Tribunal is requested.⁶

11. That when issuing measures of protection, the Tribunal or whoever is presiding is not required, in principle, to find evidence of the facts that *prima facie* appear to fulfill the requirements of Article 63 of the Convention. On the contrary, the maintenance of the measures of protection demand an evaluation by the Court regarding the persistence of the situation of extreme gravity and urgency to avoid irreparable damage that gave origin to the measures,⁷ on the basis of the evidentiary information.⁸

12. That the information presented by the representatives and the State (*supra* Considering 8 and 9) demonstrate, *prima facie*, that Ms. Rosendo and her daughter, who are the presumed victims in a case before the Court regarding, *inter alia*, the alleged sexual violation against Ms. Rosendo, supposedly committed by military personnel, and with the lack of an investigation of such facts, are found in a situation of extreme gravity and urgency, so that their lives and personal integrity shall be threatened and in grave risk. This results from the alleged followings carried out, the photographs taken, and the attempt to deprive the liberty of the girl. Consequently, the Tribunal finds necessary the protection of said persons through provisional measures, in light of that provided in the Convention.

13. That without prejudice to the aforementioned and in consideration of that put forth, the Court deems appropriate to order: a) that the State present a report that identifies and establishes the risk of threat for the beneficiaries of the present provisional measures, and timely defines the measures and means of specific, adequate, and sufficient protection to avoid that the risk materializes, and b) that the representatives present information that permits the Tribunal to evaluate the persistence of the situation of extreme gravity and urgency and of the need to avoid irreparable damage to the beneficiaries. Also, the Court finds it necessary that the representatives clarify their account of the facts. In this sense, the Court warns that, on one hand, it declares that in October of 2009, on two opportunities, Ms. Rosendo was followed by the same person (*supra* Considering 4.b), while,

⁶ Cf. *Case of Carpio Nicolle et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, Considering fourteenth; *Case of the Rochela Massacre*, *supra* note 2, Considering fourteenth, and *Matter of Guerrero Larez*, *supra* note 2, Considering tenth.

⁷ Cf. *Matter of Pueblo Indígena Kankuamo*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of April 3, 2009 Considering seventh; *Matters of Monagas Judicial Confinement Center (“La Pica”)*; *Matter of Yare I and Yare II Capital Region Penitentiary Center*; *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*, and *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, *supra* note 3, Considering fourth, and *Matter of A.J. et al.* Provisional Measures regarding Haiti. Order of the Inter-American Court of Human Rights of September 21, 2009, Considering eighteenth.

⁸ Cf. *Caso Carpio Nicolle et al.*, *supra* note 6, Considering fifteenth; *Matters of Monagas Judicial Confinement Center (“La Pica”)*; *Matter of Yare I and Yare II Capital Region Penitentiary Center*; *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*, and *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement*, *supra* note 3, Considering fourth, and *Matter of A.J. et al.*, *supra* note 7, Considering eighteenth.

on the other hand, they indicate that in February 2009, Ms. Rosendo had identified "the two persons that were watching and following her from her house to her job," (*supra* Considering 4.d).

14. That the State must carry out the pertinent steps so that the provisional measures ordered in the present Order are planned and applied with the participation of their beneficiaries, or their representatives, in such a manner that the measures are offered in a diligent and effective manner. The Court emphasizes that it is essential the positive participation of the State, and particularly of the representatives, with the goal of coordinating the implementation of the provisional measures in the present case.

15. That the Tribunal finds it timely to remember that when dealing with provisional measures, it corresponds to the Court to consider only and strictly those arguments that relate directly with extreme gravity, urgency, and the need to avoid irreparable damage to persons. Any other fact or argument can only be analyzed and resolved during the consideration of the merits of a contentious case.⁹

16. The adoption of provisional measures does not imply an eventual decision regarding the merits of the existing controversy between the beneficiaries and the State,¹⁰ nor pre-judges the State's responsibility for the facts denounced. When adopting provisional measures, the Tribunal is only exercising its mandate according to the Convention, in cases of extreme gravity and urgency that require measures of protection in order to avoid irreparable damage to persons.¹¹

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

In use of the powers conferred upon it in Article 63(2) of the American Convention on Human Rights and Article 27 of the Rules of the Tribunal,

⁹ 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 sixth; *Matters of the Monagas Judicial Confinement Center ("La Pica"); Matter of Yare I and Yare II Capital Region Penitentiary Center; Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison), and Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center supra* note 3, Considering fifth, and *Matter of Guerrero Larez, supra* note 2, Considering sixteenth.

¹⁰ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of July 13, 1998, Considering sixth; *Matter of the Urso Branco Prison.* Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of November 25, 2009, Considering fourth, and *Matter of Guerrero Larez, supra* note 2, Considering seventeenth.

¹¹ Cf. *Matter of James et al., supra* note 9, Considering seventh; *Matter of Fernández Ortega et al.* Provisional Measures regarding México. Order of the Inter-American Court of Human Rights of April 30, 2009, Considering nineteenth, and *Case of Kawas Fernández.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 29, 2008, Considering fifth.

DECIDES:

1. To require the State to adopt, immediately, the measures necessary to protect the life and personal integrity of Valentina Rosendo Cantú and Yenis Bernardino Rosendo, taking into consideration the situation and the particular circumstances of this case.
2. To require the State to submit to the Inter-American Court the report indicated in the Considering thirteenth of the present Order, as well as information regarding the implementation of the measures no later than March 22, 2010. Also, the State must submit a bi-monthly report about the implementation and effects of the present measures, a time period that must begin on the aforementioned date.
3. To request the representatives of the beneficiaries and the Inter-American Commission on Human Rights to present their observations in a time period of two and four weeks, respectively, from the notification of the reports of the State that are indicated in the second operative paragraph. Also, the representatives must respond to the request for clarification indicated in the Considering thirteenth of the present Order.
4. To request the Secretary to notify the present Order to the State, the Inter-American Commission on Human Rights and the representatives of the beneficiaries.

Diego García-Sayán
President

Leonardo A. Franco

Manuel Ventura Robles

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