

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS  
OF NOVEMBER 26, 2010**

**PROVISIONAL MEASURES  
REGARING THE UNITED MEXICAN STATES**

**MATTER OF ALVARADO REYES ET AL.**

**HAVING SEEN:**

1. The Order of May 26, 2010 whereby the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") ordered the adoption of provisional measures in favor of Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera. In particular, the Tribunal decided:

1. To require the State to adopt, immediately, the measures necessary to determine, as soon as possible, the whereabouts of Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera, as well as to protect their personal freedom, their right to humane treatment, and their lives.

2. To require the State to inform the Inter-American Court of Human Rights, no later than June 3, 2010, of that indicated in the first operative paragraph of [that] Order.

3. To require the State, likewise, to inform the Inter-American Court of Human Rights, every two months, computed as of June 3, 2010, of the provisional measures adopted pursuant with the decision.

4. To request that the representatives of the beneficiaries and the Inter-American Commission present to the Inter-American Court of Human Rights, within a one-week term, the observations considered appropriate to the report mentioned in the second operative paragraph of the [...] Order.

5. To request that the representatives of the beneficiaries and the Inter-American Commission on Human Rights present their observations, within a four and six week term, respectively, computed as of the notification of the State's reports indicated in the third operative paragraph.

2. The communications of June 3, 9, and 28; July 1; August 3; and October 5, 2010 and attachments whereby the United Mexican States (hereinafter "the State" or "Mexico") submitted information relating to the implementation of the present provisional measures.

3. The briefs of June 24, September 21, October 1, and November 22, 2010 and attachments whereby the representatives of the beneficiaries (hereinafter "the representatives") submitted their observations on the information presented by the State in relation to implementation of the present provisional measures.

4. The communications of June 18, October 12, and November 26, 2010, whereby the Inter-American Commission of Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented its observations on the information

submitted by the State as well as that cited by the representatives in relation to the implementation of these measures.

5. The brief of September 3, 2010 whereby the Inter-American Commission requested an extension of the present provisional measures in favor of 11 family members and seven representatives of the beneficiaries.

6. The notes of the Secretariat of the Court (hereinafter "the Secretariat") of September 7, 22, 28, and 30, 2010 whereby, pursuant to instructions from the President of the Court (hereinafter "the President"), the State was asked to provide its observations on the Commission's request to extend provisional measures as well as on the representatives' information regarding alleged "acts of harassment" against them.

7. The briefs of September 24 and October 5, 2010 and attachments whereby the State submitted its comments on the Inter-American Commission's request to extend the present provisional measures, as well as on alleged "acts of harassment" cited by the representatives.

8. The Secretariat's note of October 12, 2010 whereby, pursuant to instructions from the President, the Commission was asked to provide additional information in relation to the request to extend these measures.

9. The communications of October 27 and November 1, 2010 whereby the Inter-American Commission submitted the additional information requested by the President regarding the request to extend provisional measures. In these communications, the Commission increased the number of persons for whom the extension was sought to 24 family members and seven representatives of the beneficiaries.

10. The Secretariat's note of October 29 and November 2, 2010 whereby, pursuant to instructions from the President, the State was asked to submit its observations on the additional information furnished by the Commission and, in particular, on the motion to increase the total number of beneficiaries in the request to extend provisional measures in favor of new family members.

11. The State's brief of November 11, 2010 whereby it submitted its observations on the Commission's additional information and on the motion to increase the total number of beneficiaries in the request to extend provisional measures in favor of new family members (*supra* Having Seen 9).

#### **CONSIDERING:**

1. Mexico has been a State Party to the American Convention since March 24, 1981, and, pursuant to Article 62 of the Convention, recognized the contentious jurisdiction of the Court on December 16, 1998.

2. Article 63(2) of the American Convention states 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. The terms of Article 27 of the Rules of Procedure of the Court<sup>1</sup> (hereinafter “the Rules of Procedure”) establish in relevant part that:

1. At any stage of proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, on its own motion, order such provisional measures as it deems appropriate, pursuant to Article 63(2) of the Convention.

2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission

[...]

7. The monitoring of urgent or provisional measures ordered shall be carried out through the submission of reports by the State and the filing of observations to those reports by the beneficiaries of the measures or their representatives. The Commission shall submit observations to the State’s reports and to the observations of the beneficiaries of the measures or their representatives.

[...]

4. Pursuant to Article 63(2) of the Convention, the obligation to comply with the rulings of the Court corresponds to a basic principle of law on the international responsibility of States, supported by international jurisprudence, according to which the States must comply with their international conventional obligations in good faith (*pacta sunt servanda*).<sup>2</sup> These obligations imply a special duty to protect the beneficiaries of the measures while they remain in effect, and failure to comply with them may result in international liability on the part of the State.<sup>3</sup>

5. In International Human Rights Law, provisional measures not only have a precautionary character, in the sense that they preserve a legally cognizable situation, but also a fundamentally protective one as they seek to safeguard human rights and avoid irreparable damage to persons. The measures are applied as long as the basic requirements of extreme gravity, urgency, and the need to prevent irreparable harm to persons are met. Thus, provisional measures are transformed in a true jurisdictional guarantee of a preventive nature.<sup>4</sup>

6. In accordance with the Court’s Order of May 26, 2010, the State must adopt the provisional measures necessary to determine the whereabouts of Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera as well as to protect their lives, right to humane treatment, and person freedom. In the present Order, the Tribunal will analyze: (i) the implementation of provisional measures in favor of the aforementioned beneficiaries and (ii) the request to extend provisional measures in

<sup>1</sup> Rules of Procedure of the Court approved during its LXXXV Regular Session held from November 16-28, 2009.

<sup>2</sup> 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; *Matter of Gladys Lanza Ochoa*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of September 2, 2010, Considering clause three; and *Matter of the Araguan Correctional Facility “Tocorón Prison”*. Provisional Measures regarding Venezuela. Order of the President of the Inter-American Court of Human Rights of November 1, 2010, Considering clause four.

<sup>3</sup> Cf. *Case of Hilaire, Constantine, and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations, and Costs*. Judgment of June 21, 2002. Series C No. 94, paras. 196-200; *Case of 19 Tradesmen*. Monitoring Compliance with Judgment and Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of July 8, 2009, Considering clause ninety; *Case of 19 Tradesmen*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of August 26, 2010, Considering clause three.

<sup>4</sup> Cf. *Case of “La Nación” Newspaper*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering clause four; *Matter of Gladys Lanza Ochoa*, *supra* note 2, Considering clause six; and *Matter of the Araguan Correctional Facility “Tocorón Prison”*, *supra* note 2, Considering clause six.

favor of Patricia Reyes Rueda, Alan Alvarado Reyes, Adrián Alvarado Reyes, Michelle Urrutia Alvarado, Manuel Reyes, Obdulía Espinoza Beltrán, Johana Alvarado Espinoza, José Ángel Alvarado Espinoza, Angélica Alvarado Espinoza, José Ángel Alvarado Favela, Concepción Herrera Hernández, Jaime Alvarado Herrera, Manuel Melquíades Alvarado Herrera, Rosa Olivia Alvarado Herrera, Karina Paola Alvarado Alvarado, Fabián Alvarado Herrera, Feliz García, Mitzi Paola Alvarado Espinoza, Nitza Citlali Alvarado Espinoza, Daisy Alvarado Espinoza<sup>5</sup>, María de Jesús Alvarado Espinoza, Rigoberto Ambriz Marrufo, María de Jesús Espinoza Peinado, Ascensión Alvarado Favela, all family members of the beneficiaries, as well as Emilia González Tercero, Patricia Galarza Gándara<sup>6</sup>, Brenda Andazola, Luz Esthela Castro Rodríguez<sup>7</sup>, Oscar Enríquez, Javier Ávila Aguirre y Francisca Galván, their representatives.

***1. Regarding the implementation of provisional measures in favor of Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera***

7. Regarding the implementation of protective measures, the State noted that “it has shown its willingness to undertake an investigation into the facts by way of the legally-constituted institutions, exhausting all possibilities and managing efforts in all [s]tates throughout the country [...] so that the [federal authorities] initiate search protocols to ascertain the whereabouts of [the beneficiaries].” The State declared that it is “surprised that all steps or efforts undertaken by the State of Mexico have been classified by the representatives of the beneficiaries as fruitless,” but that despite this “the search for the beneficiaries [would] continue through the exhaustion of all legal means and tools.” In this regard, the State reported that the Attorney General’s Office (hereinafter the “PGR”) through the Special Prosecution Unit for Violence Against Women and the Treatment of Persons (hereinafter “FEVIMTRA”), as well as the Chihuahua Attorney General’s Office (hereinafter “PGJE”) “maintain open, ongoing investigations in which progress has been made and several investigatory avenues are being followed.” In that regard, the State explained that the PGR had reported that it opened three investigations, each “within the province of the powers and special functions that the law provides [to it]”: the first before the head of the Seventh Investigatory Agency of Criminal Procedure Subsection A of the PGR in Chihuahua state, which was later sent to the representative of the Military Prosecutor’s Office due to lack of jurisdiction; the second before the head of the Investigatory Agency of Nuevo Casos Grandes in Chihuahua state; and the third before FEVIMTRA. The State insisted that “there [wasn’t] [any] delegation of jurisdiction to the military courts [on the part of the Attorney General’s Office] as [there was with] the facts that gave rise to the protective measures,” by virtue of the investigation lodged before FEVIMTRA for the crime of forced disappearance. The State added that concerning the case file forwarded to the Military Prosecutor, the Social Representation of the Federation had stopped investigating the crime of abuse of authority because “it determined a lack of

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<sup>5</sup> In its initial request of September 3, 2010 to expand the present provisional measures (*supra* Having Seen 5), the Commission identified this proposed beneficiary as “Deisy” Alvarado Espinoza. In its later communication of October 27, 2010 (*supra* Having Seen 9), as well as in other briefs by the representatives, she was identified as “Daisy” Alvarado Espinoza. For the purposes of this Order, the Court will utilize the latter form.

<sup>6</sup> In its initial request of September 3, 2010 to expand the present provisional measures (*supra* Having Seen 5), the Commission identified this proposed beneficiary as Patricia “Garza” Gándara. In its later communication of October 27, 2010 (*supra* Having Seen 9), as well as in other briefs by the representatives, she was identified as Patricia Galarza Gándara. For the purposes of this Order, the Court will utilize the latter form.

<sup>7</sup> This representative is identified in some briefs as Luz “Esthela” Castro Rodríguez and on other occasions as Luz “Estela” Castro Rodríguez. For the purposes of this Order, the Tribunal will adopt the most frequent form utilized by both the Commission and the representatives, which is Luz Esthela Castro Rodríguez.

elements [pointing to a] federal question.” Regarding the steps taken in the aforementioned cases open before the PGR, Mexico noted that:

- a) Concerning the prior investigation begun in FEVIMTRA, several steps have been taken, among which it highlighted the carrying out of: an inspection in the place where two of the beneficiaries were allegedly detained; an inspection of Rocío Irene Alvarado Reyes’s domicile; an inspection by the State Agency for Investigations in Chihuahua into the location where the vehicle manned by Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera was at one point located; the testimonies of two police officers assigned to the State Agency for Investigations as well as of Obdulia Espinoza Beltrán, wife of José Ángel Alvarado Herrera; an agent of the National Public Prosecutor’s Office assigned to the PGR regional delegation in Ciudad Juárez; and another official assigned to the PGR regional delegation in Ciudad Juárez. Later, in its October 5, 2010 report (*supra* Having Seen 2) the State added, *inter alia*, that it turned to the National Banking and Securities Commission to obtain information in the National Banking System on accounts in the beneficiaries’ name. The State also requested a copy of the affidavit prepared by the Deputy Delegate for Criminal Proceedings “A” of the Chihuahua state delegation on the beneficiaries’ disappearance and solicited the collaboration of the “Attorney General [and of the] Minister of Public Safety, both from the [s]tate of Chihuahua” to subpoena a witness as well as the head of the Emergency and Immediate Response Center in order to obtain copies of the recordings from surveillance cameras in the municipalities of Buenaventura and Nuevo Casas Grandes from December 29 and 30, 2009. The State indicated the presence of the report of the Ministerial Police which stated that its members had gone to the cooperative of Benito Juárez, Municipality of Buenaventura, Chihuahua, “where they interviewed several people[,] inquired into operations of the Mexican military, and located zones of military activity near the scene of the events.” Furthermore, it requested copies of the case file opened by the National Human Rights Commission and sent a letter to the Military Prosecutor “so that in a spirit of cooperation” various tasks might be performed relating to the 35<sup>th</sup> Infantry Battalion, as well as to obtain a copy of the preliminary investigation corresponding to the facts in the present case. Also, regarding the telephone call allegedly placed by Nitza Paola Alvarado Espinoza on February 3, 2010 asking for help<sup>8</sup>, the State indicated in its briefs of August 3 and October 5, 2010 that, in its investigation before FEVIMTRA, the public prosecutor could determine the exact telephone from which the call was allegedly made - as “it [was] apparent from the investigation, the geographic location from which the call was made” - but the service provider had reported that “the number at issue was a prepaid one, and therefore it [was] not possible to determine to whom it belong[ed].” In this regard, the State noted that the aforementioned Social Representation of the Federation “[would] continue to study the data provided by the telecommunication companies, as well as the analysis of phone traffic and activity on certain numbers, from which it [would then] draw investigative conclusions.”
- b) Regarding the affidavit prepared before the Investigatory Agency of Nuevo Casas Grandes, “several steps ha[d] been taken,”<sup>9</sup> but “until this investigation

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<sup>8</sup> Cf. *Matter of Alvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of May 26, 2010, Having Seen clauses 3(b)(vi), 7(i), 7(ii).

<sup>9</sup> In its June 3, 2010 brief, the State submitted “an update on the steps taken” by this office. In addition to the ministerial actions previously reported to the Tribunal before the Order of May 26, 2010 in the present matter, the State reported, *inter alia*, that certified copies of the investigation begun on December 31, 2009 had been requested and received. Further, requests for information from the National Human Rights Commission had been responded to and reports or letters were received from the PGJE, the Federal

[obtains] proof sufficient to demonstrate the participation of members of the military in these events, the Social Representation of the Federation will be able to raise this affidavit in [its] preliminary investigation."

8. Additionally, the State indicated that the PGJE "continue[d] with investigative procedures in all cases with outstanding complaints in order to uncover the truth of the matters alleged and identify those responsible." On June 28, 2010, the State provided a copy of the case file corresponding to this investigation, and in August 2010 it indicated with respect to this procedure that "the investigations [were moving forward] with the aim of gathering more proof directly related to the established guidelines." The State also reported on activities this institution had conducted in favor of the beneficiaries' family members, among which it mentioned having provided them with legal assistance; informing them as to their rights and the investigation's ongoing development; giving them the opportunity to consult the case file and obtain certified copies of the same; receiving the evidence at the State's disposal; and fulfilling their requests and proposals. The State insisted that the beneficiaries' family members "have the opportunity to act as ancillary parties to the investigation (in Spanish "*coadyuvancia*" - similar to the Anglo "*amici curiae*"), whereby the representatives of the beneficiaries may submit evidence jointly with the authorities so that it is duly integrated into the investigation," but that these representatives "have emphasized their lack of inclination to do so." In that regard, the State requested that the family members and the representatives collaborate with "the ministerial authorities making up these separate investigations wherever [...] necessary."

9. The State also noted that it was in the course of exerting "the maximum effort to determine the beneficiaries' whereabouts" for which it required information "from various authorities at three levels of government."<sup>10</sup> In that regard, the State submitted a communication from the National Commission for the Prevention and Eradication of Violence Against Women (hereinafter "CONAVIM") in which this organization reported that it "d[id] not have any further information to provide."<sup>11</sup> The State also presented a letter written to the Ministry of National Defense (hereinafter "SEDENA") showing that the Military Prosecutor was moving forward with the integration of the preliminary investigation, which "in itself constitute[d] a measure to clarify whether military personnel participated in the alleged disappearance of the [beneficiaries]," and that "it [was] unknown" whether SEDENA officials had had contact with the beneficiaries after December 29, 2009 "because the authorities of the 5th Military Zone (Chihuahua, Chih.) [had] den[ie]d that personnel from their jurisdiction

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Investigation Agency, Amnesty International, and other non-governmental organizations from various countries.

<sup>10</sup> In this regard, the State indicated that it has received responses from different authorities from three different levels of government, among which it mentioned: the General Ministry of the Government of Chihuahua; the Ministry of Public Safety and Citizen Protection of Chihuahua; the CONAVIM; the National Commission on Human Rights; the Supreme Court of Mexico; the Ministries of the Governments of Aguascalientes, Querétaro, Guerrero, State of Mexico, Colima, and Oaxaca; the Attorneys General of Chiapas, Durango, Baja California, Hidalgo, Querétaro, Veracruz, Puebla, and Nuevo León; and the State Human Rights Commissions of Guanajuato, Veracruz, Guerrero, Colima, Jalisco, Coahuila, Durango, Quintana Roo, Hidalgo, South Baja California, Campeche, Sonora, and Morelos. The responses from the majority of the aforementioned State authorities indicate they do not know about the case or have in any information to provide in relation to it (Attachments from the State's brief of June 3, 2010).

<sup>11</sup> In that letter, the CONAVIM remarked that it had requested information from the FEVIMTRA, the Director for International Cooperation of the PGR, and from the Unit for the Promotion and Defense of Human Rights in the Ministry of Governance. In that regard, the CONAVIM stated that it had been informed of steps taken by the FEVIMTRA and that the latter had expressed its willingness to establish a communications link and a permanent dialogue with the family members of the victims and their proper representatives. For this reason, the CONAVIM reaffirmed its availability in its North and Central regional offices "so that when they see fit, they can go there for information" (Attachment 2 of State's brief of August 3, 2010).

[had] participated in the events described by the plaintiffs.”<sup>12</sup> In its later brief of September 24, 2010 (*supra* Having Seen 7), the State indicated that two investigations were open before the Military Prosecutor for events giving rise to the protective measures. Additionally, the State noted that in an effort to “publicize the beneficiaries’ disappearance throughout the country” and “in support of ministerial investigations[,] the [Ministry of Governance] took on the labor of reporting [this] to other federal departments and all federal entities, requesting that they make use of their respective powers to facilitate support in the search for the beneficiaries.”<sup>13</sup> In this regard, the State indicated that even though the Ministry of Governance does not have investigatory powers, information had been sent to the Attorneys General of each federal entity so that they would “undertake the search for these persons, [...] within the sphere of their competencies.” Also, in October 2010 the State reported that the Federal Ministry for Public Safety had entered the beneficiaries into the National Registry of Missing Persons, which is published on the Ministry’s web site. Proof of this publication was provided to the Tribunal.

10. Finally, the State explained that more than one investigative file existed “[was] due to the fact that the Public Prosecutor, given his autonomy and independence, has the obligation to commence [a] preliminary inquiry or [to prepare a] detailed affidavit upon becoming aware [that a crime has been committed], thus, once the relevant steps have been taken, he [would] be capable of determining the proper legal recourse, whether [that were to be] ordering a consolidation of suits, lack of jurisdiction, or not pursuing a criminal action, excepting or including a period of detention.”

11. Regarding the steps taken by the State, the representatives indicated that “the agencies of the State of Mexico that ha[d] opened an investigation or [drafted] a detailed report on the Alvarado case ha[d] not undertaken efforts or search actions [but rather] limite[d] themselves to [merely] exchanging letters.” They insisted that the State has not submitted the beneficiaries’ case to the civilian authorities, nor has it provided any information as to their whereabouts or condition; it has not conducted so much as one operation to locate them; and has failed to investigate the members of the battalion that arbitrarily detained them on December 29, 2009. The representatives expressed their view that “[t]he State’s inaction for more than eight months has aggravated the risk to the right to humane treatment for [the beneficiaries], their family members, and their representatives.” In this regard, the representatives noted that since the award of precautionary measures on the part of the Inter-American Commission in March 2010, the State has only held two meetings with the petitioners. They noted that the first of these meetings was held on March 10, 2010 in which the petitioners requested that the State perform concrete investigatory actions in order to find the beneficiaries, among which they requested that the investigation into the disappearance take place civilly.<sup>14</sup> They accordingly stressed that

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<sup>12</sup> In addition to his report from the Director of Human Rights at the SEDENA, the State submitted a letter from the Commander of the 35th Infantry Battalion where, in response to the request for information on the part of the Undersecretary for Legal Affairs and Human Rights in the Ministry of Governance, he indicated that the “Battalion command [did] not have the authority to respond to [that] request” and it was suggested “to direct the request to the Director of Human Rights [...] under the [SEDENA]” (Attachments from the State’s brief of June 9, 2010).

<sup>13</sup> In its later brief of October 5, 2010, the State attached a chart stating that it had requested information from federal authorities in Aguascalientes, Baja California, South Baja California, Campeche, Chiapas, Coahuila, the Federal District, Colima, Durango, the State of Mexico, Guerrero, Guanajuato, Hidalgo, Jalisco, Michoacán, Morelos, Nayarit, Nuevo León, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatán, and Zacatecas. From this chart, it is apparent that all the various federal authorities from which the State requested information - with the exception of those corresponding to the State of Chihuahua - indicated that they did not have information on the beneficiaries or they were not aware of the facts underlying this case (Attachment 3 of the State’s brief of October 5, 2010).

<sup>14</sup> The representatives explained that, among such measures, they requested that the State: guarantee that the investigation take place in the civil courts and not the military ones; refrain from summoning family

despite the State's contention in the minutes of that meeting that "it [would] carry out a high-level meeting" to address this issue, to date Mexico has not reported on its results, and the military prosecutor continued to investigate the case. The representatives added that SEDENA opened two preliminary inquiries into this case and "has refused to transfer these investigations to the civil sphere" in contravention of international standards on the issue. They also noted that the State has not provided copies of these files to the Military Prosecutor's Office and expressed their view that if any investigation continued to be the province of military jurisdiction or if civil authorities requested the military's intervention in solving the matter, it "c[ould] seriously hinder any inquiries that may be undertaken." The representatives reported that on May 19, 2010, the second meeting was held and that in it "the State failed to respond to requests for investigations and protection," and State officials "abandoned the meeting without any warning,"<sup>15</sup> which in the representatives' opinion evinced "a total lack of will and interest in this serious case of disappearance." They added that since the last meeting, the State "has not communicated with the petitioners to inform them [regarding] the investigative measures [or] the protection requested," and that the representatives also have not been summoned by any civil court since that date. The representatives were insistent in their contention that since the granting of provisional measures, no meeting has been held relating to their fulfillment and that the information the State submitted to the Court is not updated. For this reason, the representatives are unaware whether the State has taken any steps in fulfillment of these measures. In their November 22, 2010 observations, the representatives noted with "great concern" that the State "continues to provide information already offered in other [previous] briefs."

12. Regarding the actions and formalities about which the State provided information, the representatives observed in September 2010 that "more than 200 days [had] passed since the disappearance" of the Alvarados, which leads them to conclude that the State's efforts "have not given the case the relevance it requires." They noted that the PGR and the PGJE "have only gone so far as to submit affidavits which, in Mexican law, are [merely] a statement of facts [that] do not obligate investigation of a crime." They stressed that FEVIMTRA is "the only civil instance with a preliminary inquiry" without it being clear "why the prosecutor [assigned to the special division] for the treatment of women would be investigating a case of forced disappearance and whether this prosecutor has the capabilities, power, and resources

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members and representatives of the victims to military barracks; provide copies of the preliminary investigations in the possession of the Military Prosecutor's Office; provide information regarding the name and rank of the State's designated person responsible for conducting the investigation into the forced disappearance; establish a working group in which every 15 days all case files and ongoing investigations are reviewed so that the representatives are made aware of what has been done; and provide information on the name of the Army general that confiscated the truck in which the beneficiaries Nitza and José Ángel Alvarado were traveling when they were allegedly detained arbitrarily on December 29, 2009.

<sup>15</sup> In this regard, together with their brief of September 21, 2010 (*supra* Having Seen 3), the representatives submitted a copy of the May 19, 2010 affidavit filed by the representative of the Chihuahua State Commission on Human Rights who had attended the meeting. At that meeting, this government representative exclaimed that "we had moved to request from the heads of the [State] institutions [present] their timely response to questions asked during the meeting held last March 10th [2010] about issues raised that were not substantially resolved, and to address the security measures to protect the life and right to humane treatment of those involved. Because of the lack of viable proposals to solve this matter, it was agreed to end the discussion and proceed to a reading and signing of the memorandum; however, this did not happen because the heads of the aforementioned agencies left the room where the session was being held, with the exception of the SEDENA members who remained until the end" (Attachment 4 from the representatives' September 21, 2010 brief). Together with their October 1, 2010 (*supra* Having Seen 3) brief, the representatives also submitted a copy of the informational note from the National Commission on Human Rights, who had also been present at the meeting and whose note (written at the representatives' request) states that "at the close of the [meeting held on May 19, 2010] the representatives of the agencies that participated in this meeting left the property without explanation, leaving only the personnel from [the] SEDENA, the Chihuahua State Commission on Human Rights, the undersigned [representative of the National Commission on Human Rights], as well as the representatives and family members of the aggrieved" (Sole attachment to the representatives' October 1, 2010 brief).



to do so." In this regard, they argued that FEVIMTRA personnel were denied access to the 35th Infantry Battalion of Casas Grandes and that from their case file "no action showing an investigation of members of the military [was] apparent," "nor formalities or concrete efforts [at conducting] a search." They stressed that the State "continues to treat the case as one of missing persons when there are sufficient elements to investigate a forced disappearance at the hands of the army." They accordingly noted that classifying this investigation as a missing persons case - which is not itself a crime - "is to diminish the seriousness of the crime committed and to delimit the possibility of achieving results [...]." They observed that there has been an "unjustified delay" on the part of the State in establishing the geographical position of the telephone from which the beneficiary Nitza Paola placed a call on February 3, 2010. They likewise considered it inexplicable that "seven months since Nitza made that call for help, which would be crucial to saving her life, none of the investigations have proven capable of determining its provenance [nor] has a single operation taken place in that location to find Nitza." The representatives expressed their view that "[t]his very serious omission evinces at the very least a lack of interest and willingness on the part of the State of Mexico to safeguard the [physical, mental, or moral] integrity of the victims of forced disappearances." Concerning the letters sent to the various federal entities, the representatives observed that these efforts lacked clarity regarding the information requested, the databases or archives where the searches were to take place, and the manner in which they were to be carried out. Thus, they viewed this exchange as "rather resembling formalities that are being undertaken in a mechanical fashion[.]" unbecoming the sort of effective and immediate response that a situation of forced disappearance requires.

13. The representatives also indicated that the actions of the PGR have been "lacking in coordination, confused, and contradictory" because on the one hand it reported that one of its agencies could not file a criminal affidavit in the preliminary investigation due to the lack of sufficient elements tending to show the participation of military officials; yet, at the same time, it declared that another agency had delegated jurisdiction to the military court system regarding the first preliminary investigation that had been previously commenced (*supra* Considering 7). They regarded this as a confusion because in order for one agency to delegate jurisdiction to the military justice system "there had to exist elements necessary to corroborate that it was members of the military who committed the crime." They further noted that this result was also contradictory because "the PGR ha[d] [already begun under the auspices of] FEVIMTRA, one of its units, a preliminary investigation for forced disappearance in the [present] case." Regarding Mexico's proposal to include the beneficiaries in the Support Program for Families of Missing and Abducted Persons with the aim of spreading personal information and photographs of the beneficiaries under the caption "Help them return home," the representatives considered that with such a move the PGR was in fact proposing to carry out social services and not the prosecution of a crime in locating the beneficiaries. This was as if discovering the beneficiaries' location depended on society's efforts "and not [on] investigations or actions on the part of the search authorities in military quarters or in the place from [whence] Nitza made the phone call." The representatives also noted that despite the State's information "at present, none of the family members ha[d] received [from the Public Prosecutor's Office] the aforementioned [legal or counseling] assistance" (*supra* Considering 8). They stressed that "in the case files, there is no record of any investigation related to members of the armed forces despite their being the only ones accused of the forced disappearance of the Alvarados." In general, the representatives were of the view that the State's efforts in the course of the open investigations, in particular those carried out by FEVIMTRA, appear to be merely procedural, thereby permitting one to note the

lack of clarity and urgency on the part of the State in acting swiftly to protect disappeared persons.<sup>16</sup>

14. Regarding the State's argument as to the representatives' alleged "lack of willingness" to collaborate with State authorities in the investigation (*supra* Considering 8), the representatives indicated that their "principal interest [is] that the lives and right to humane treatment of the victims are protected" and that it is the State's corresponding duty to investigate the case and not that of the representatives. They added that in the information presented "it is clear that the representatives have actively participated in each of the reunions to which they have been called, including [those convened by members of the] military," among other efforts such as submitting requests for investigations, protection, and information in order "to compare [data] and seek the truth of the matters at issue."

15. Concerning the representatives' observations, the State stated that "having sent letters of collaboration to various authorities in the federal entities," several mechanisms to carry out the search for allegedly disappeared persons nationwide were engaged, as the search for such individuals takes place "in all Mexican territories." Regarding the representatives' comment that FEVIMTRA lacks the capabilities to handle the beneficiaries' case, the State pointed out that it "invite[d] the representatives of the beneficiaries and their family members to consult with the relevant authorities on scenarios in which they might work together in a coordinated and mutually cooperative fashion[, as] it [was] of no help disqualifying civilian authorities who [were] investigating the facts." The State also noted concerning the meeting held on May 19, 2010 (*supra* Considering 11) that "at no point was the meeting 'abandoned'" as it had already come to a close when the heads of the state agencies departed, but even still "officials of every agency remained in the capacity of representatives [of those who had left]."<sup>17</sup> The State remained insistent that "the efforts of the State authorities [were] aimed at locating the beneficiaries by all means available, for which the participation of the representatives of the beneficiaries was sought in the consolidation of the investigations [and] where [...] necessary in the actions [for which] the Public Prosecutor [so] requested."

16. For its part, the Inter-American Commission took note of the State's expression of willingness to ascertain the whereabouts of the beneficiaries, but it observed from the State's most recent brief that "no serious or immediate advances in the search [for them] were apparent." It expressed its concern that in its briefs the State "[had] limit[ed] itself to responding generally to the [Commission's] and the representatives' questioning," and that even the information Mexico submitted in response to this questioning, which "only [constituted] examples of the lack of an immediate response in view of the gravity of the situation," "[was] generic and [did not] provide updated information concerning the investigations." The Commission observed "without any claim of completeness" that there are "basic procedures which *prima facie* have not been given timely attention in view of the nature of the facts." Particularly, concerning the need to determine the geographical position of the telephone call that Nitza Paola Alvarado made on February 3, 2010, the Commission stressed that "despite the State's

<sup>16</sup> In particular, the representatives noted in their November 22, 2010 brief (*supra* Having Seen 3) that the State has not indicated the date in which the actions it reported took place, the motive for them, or the goal of the same. The representatives also indicated with respect to certain actions that the information presented by the State is incomplete or contains omissions regarding the results obtained from them as well as the relation that they have with the geographical location of the beneficiaries.

<sup>17</sup> In this regard, the State submitted a letter from the CONAVIM stating that when it was agreed to conclude discussion and to proceed to the signing of the memorandum, it was explained to those present that the top figures from the respective agencies were obligated to relocate to another room in the same building, but that "the officials from each agency [who were] directly responsible for the operation of the precautionary measures" remained in their representative capacity "with the aim of seeing the meeting to a close, which [...] had already in large part concluded" (Attachment 1 from the State's brief of October 5, 2010).

assertion [that it] was already in possession of the geographical location of the call, it did not present any information regarding immediate monitoring efforts for this information, nor any efforts aimed at verifying the presence of the beneficiary in that place." The Commission noted its serious concern that "months continue to pass by and the State [...] has not advanced serious investigations into [that] call," and it considered it "unacceptable" that Mexico had submitted "the same information" concerning this point in its last two briefs.

17. Regarding the actions undertaken by the State, the Inter-American Commission observed that Mexico has only remarked that it was carrying out "several procedures" and that "soon it [would] submit the corresponding information" in relation to the investigation into the participation of military officials in the beneficiaries' disappearance. Also, regarding the steps undertaken by FEVIMTRA about which the State provided some information (*supra* Considering 7(a)), the Commission noted that the State "has not made reference to the specific dates when they were conducted nor the results obtained from them." In this regard, the Commission concurred with the representatives in that the lack of information on these dates impeded "an understanding of the consequential theme of the investigations as well as [a verification] as to whether these were updated procedures." The Commission further concurred with the representatives in that "some of the actions [taken] [...] d[id not] appear to be related to the search for the beneficiaries pursuant to indications of military participation," and Mexico provided no information as to which investigatory avenue this was aimed at addressing. Likewise, regarding the PGJE's actions which were also featured in the State's brief (*supra* Considering 8), the Commission noted that in the copy of the file from this institution furnished by the State "[there is a record] of actions only up until March 16, 2010." Regarding the search for the beneficiaries in the country's various official agencies (*supra* Considering 9), the Commission observed that in the State's last brief it was unclear whether the actions indicated therein were new ones "or whether they concern[ed] previously sent letters." The Commission stressed that the aforementioned letters "did not provide any relevant information concerning the beneficiaries' whereabouts," for which reason the State was obligated to engage complete and coordinated efforts among its various branches and authorities to immediately ascertain them. Conversely, the Commission positively assessed the beneficiaries' entrance into the National Registry of Missing Persons and indicated that it hoped the State would continue to "keep a close eye on" this initiative and that it provide information on its results. The Commission observed that the State had reported that the collaboration of the Military Prosecutor's Office to perform tasks in the 35th Infantry Battalion. The Commission regarded such steps as essential but also noted that the State was to take whatever measures necessary to ensure that these efforts were conducted by authorities who could offer *prima facie* guarantees of impartiality and independence in order to effectively contribute to the search for the beneficiaries. To do otherwise "c[ould] have negative effects" in obtaining information on their whereabouts. Finally, the Commission noted from the State's briefs that "it turn[ed] out that the provisional measures ha[d] not achieved adequate compliance" and that the State's actions to date "[were] not appropriate to the nature of the situation denounced, nor to the necessity of adopting immediate and effective measures to clarify the events and determine the beneficiaries' whereabouts." The Commission stressed that in cases such as the present one, "the passage of time without adopting serious investigative search measures augments the extreme risk in which the beneficiaries may find themselves."

18. The Court deems it appropriate to recall that the present provisional measures were adopted in light of the fact that Rocío Irene, Nitza Paola, and José Ángel Alvarado, who are all cousins, have been missing since the night of December 29, 2009 when they were allegedly deprived of their liberty in an illegal manner by State agents.<sup>18</sup> The

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<sup>18</sup> Cf. *Matter of Alvarado Reyes et al.*, *supra* note 8, Considering clause eight.

Court also notes that in its Order of May 26, 2010 the State was ordered to adopt all measures necessary to ascertain the whereabouts of the beneficiaries and, immediately thereafter, to protect their lives, personal freedom, and right to humane treatment.

19. In this regard, the Tribunal takes note of the State's efforts to search for the beneficiaries throughout its national territory as well as to obtain the collaboration and information of its many federal agencies (*supra* Considering 9). Likewise, the Court observes that in the State's last brief it indicated that the beneficiaries had been included in the National Registry of Missing Persons (*supra* Considering 9). It acknowledges the formal efforts on the part of FEVIMTRA and the PGJE, as well as the two open investigations in the Military Prosecutor's Office (*supra* Considering 7-9). However, the Court finds that 11 months from the date of the alleged forced disappearance of the beneficiaries, the actions on the part of the State authorities have not resulted in concrete results or positive advances capable of enabling a determination as to the whereabouts or present situation in which Rocío Irene, Nitza Paola, and José Ángel Alvarado find themselves.

20. The Court finds it necessary to stress that when there are reasonable motives to suspect that a person has been forcibly disappeared, swift and immediate action on the part of prosecutorial and judicial authorities is necessary. This may be achieved by ordering necessary and appropriate measures aimed at ascertaining the whereabouts of the victim or the location of the place in which he or she may be deprived of their liberty.<sup>19</sup> In this regard, the Court notes the representatives' observations in that the State's treatment of the present matter is more befitting a missing persons case rather than one involving an alleged forced disappearance (*supra* Considering 13); this could result in limitations on the effectiveness of the measures adopted by the State to discover the beneficiaries' whereabouts. Thus, the Court deems it necessary for Mexico to address these observations in a detailed and thorough manner in its next brief.

21. The Tribunal emphasizes that the present provisional measures seek to protect the life, liberty, and right to humane treatment of the beneficiaries who are allegedly the victims of a forced disappearance. In this regard, it recalls that pursuant to Article II of the Inter-American Convention on the Forced Disappearance of Persons, of which Mexico is a signatory, "forced disappearance" is defined as:

the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

22. Thus, the Court urges the State to take into account the characteristic elements of this alleged violation when it adopts measures to determine the beneficiaries' whereabouts. In particular, the Court observes that from the information submitted by the State, the denial of knowledge about this matter on the part of those who have been singled out by the family members as the parties allegedly responsible for the beneficiaries' disappearance is evident (*supra* Considering 9). This is so despite the lack of any presentation of detailed and complete information on other members the

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<sup>19</sup> Cf. *Case of Anzualdo Castro v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of the Inter-American Court of Human Rights of September 22, 2009. Series C No. 202, para. 134; *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of the Inter-American Court of Human Rights of November 23, 2009. Series C No. 209, para. 221; and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations, and Costs*. Judgment of the Inter-American Court of Human Rights of September 1, 2010. Series C No. 217, para. 167. See also: *Matter of Natera Balboa*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 1, 2010, Considering clause thirteen.

State may have adopted - within the framework of the Military Prosecutor's respective inquiry - to determine the truth of these affirmations, with the exception of the inspection carried out in March 2010 by the National Human Rights Commission in one of the State security installations in the area.<sup>20</sup>

23. The Court also takes note of the representatives' affirmations in that the entrance of FEVIMTRA personnel into military installations, the same persons in charge of the PGR investigation, was denied (*supra* Considering 12). At the same time, the Court observes that the State did not make any mention of this comment on the part of the representatives. Thus, the Tribunal reminds the parties that it is fundamental for authorities in charge of investigating a case of an alleged forced disappearance to have unlimited access to detention centers, both with regard to documents as well as persons.<sup>21</sup> The latter is especially relevant in light of the fact that the goal of the present measures is precisely that State authorities determine the whereabouts of the beneficiaries so as to be able to protect their rights.

24. Conversely, the Tribunal notes that the State has continuously provided information to the Court ever since its first communication of May 21, 2010 and up until its last one dated October 5, 2010,<sup>22</sup> that it knows the location from which Nitza Paola Alvarado allegedly placed a phone call on February 3, 2010. However, the State has not reported on any measure or action that it might have taken as a consequence of this information in order to locate the beneficiary pursuant to the Court's specific direction in its Order of May 26, 2010. What's more, the Tribunal finds that the information submitted by the State on this point does not vary at all from that which Mexico submitted prior to the adoption of the present provisional measures,<sup>23</sup> for which no concrete or positive advances could be said to have been made. The Court thus requests that the State, in its next brief on provisional measures, indicate to the Court in a detailed and thorough manner the steps it may have taken in that regard.

25. Regarding the alleged lack of cooperation with the representatives and the family members in the investigation of the present matter (*supra* Considering 8, 14-15), the Court recalls its repeated jurisprudence which states that in cases of extrajudicial executions, forced disappearances, torture, or any other serious human rights violations, the conduct of a serious, impartial, effective, and prompt investigation *ex officio* is a fundamental and conditioning element for the guarantee and protection of certain rights impacted by these situations, such as the rights to personal freedom, humane treatment, and one's very life.<sup>24</sup> In those cases, the State authorities must carry out that investigation as its own legal duty, beyond the procedural activities of the interested parties, through all available legal means, and geared towards

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<sup>20</sup> Cf. *Matter of Alvarado Reyes et al.*, *supra* note 8, Considering clause eleven.

<sup>21</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra* note 19, para. 135.

<sup>22</sup> In its May 21, 2010 brief, the State reported on the PGJE's ongoing investigation that "the institution of the State Public Prosecutor's Office [had] agree[d] to trace the call [...] and [had] obtain[ed] sufficient information to establish the origin and the geographical location from which the call was placed." Later, in its August 3 and October 5, 2010 briefs, the State reported with respect to the open preliminary investigation before the FEVIMTRA that "the geographical location of the place from which the corresponding call was made [was] contain[ed] in the investigation."

<sup>23</sup> Cf. *Matter of Alvarado Reyes et al.*, *supra* note 8, Having Seen clause 7(i).

<sup>24</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations, and Costs*. Judgment of the Inter-American Court of Human Rights of January 31, 2006. Series C No. 140, para. 145; *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of the Inter-American Court of Human Rights of May 26, 2010. Series C No. 213, para. 117; and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra* note 19, paras. 65, 155.

ascertaining the truth of the matters alleged.<sup>25</sup> Furthermore, depending on the right that is found to be in jeopardy or the violation of which is alleged, the investigation must seek the prosecution, capture, trial, and eventual punishment of all those responsible, especially when State agents are or may be involved.<sup>26</sup>

26. The Court insists that the adoption of certain protective measures on the part of the State is not enough, but rather these measures and their implementation must also be effective such that the risk for the protected persons is abated.<sup>27</sup> For its part, the State is especially obligated to guarantee the rights of the persons at risk and must promote those investigations necessary to clarify the facts, followed by the appropriate lawful consequences.<sup>28</sup>

27. The *prima facie* standard for assessing a case and the application of presumptions in the face of needs for protection have led the President and the Court to order provisional measures on several occasions.<sup>29</sup>

28. The Tribunal views the lack of concrete results on the part of State authorities in determining what actually happened to the beneficiaries, their whereabouts, and their present conditions as permitting the presumption that their rights are at risk of being violated. For this reason, they find themselves in a *prima facie* situation of extreme gravity, urgency, and serious risk. The irreparable character of the harm that could result to their rights in the face of this grave and urgent situation is evident. The situation of a disappearance constitutes a serious threat to the right to personal freedom, humane treatment, and life, which are rights of a fundamental nature that the Court has the duty to protect when the circumstances established in Article 63(2) of the American Convention are present.

29. Consequently, the Inter-American Court finds it necessary to maintain the present measures in place in favor of the beneficiaries such that the State continue to take all steps that may be necessary to ascertain the whereabouts and present situation of Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera.

## ***II. Regarding the request to expand present provisional measures in favor of certain family members and representatives of the beneficiaries***

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<sup>25</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of the Inter-American Court of Human Rights of July 29, 1988. Series C No. 4. para. 177; *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 24, para. 117; and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra* note 19, para. 155

<sup>26</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia*, *supra* note 24, para. 143; *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 24, para. 117; and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra* note 19, para. 155.

<sup>27</sup> Cf. *Matter of Juan Almonte Herrera et al.* Provisional Measures regarding the Dominican Republic. Order of the President of the Inter-American Court of Human Rights of March 24, 2010, Considering clause sixteen.

<sup>28</sup> 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; *Matter of Ramírez Hinojosa et al.* Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of February 3, 2010, Considering clause twenty-seven; and *Matter of the Peace Community of San José de Apartadó*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of August 30, 2010, Considering clause forty-four.

<sup>29</sup> Cf. *inter alia*, *Matter of the Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures regarding Venezuela. Order of the President of the Inter-American Court of Human Rights of January 13, 2006, Considering clause sixteen; *Matter of Alvarado Reyes et al*, *supra* note 8, Considering clause fourteen; and *Matter of the Aragua Correctional Facility "Tocorón Prison"*, *supra* note 2, Considering clause fourteen.

30. The present request to expand provisional measures is not related to any matter in contentious case proceedings before the Court, but rather originated in a request for precautionary measures before the Inter-American Commission. This Tribunal does not have information concerning whether the facts considered by the Commission might become part of a contentious case in the Inter-American System in the future or whether a petition on the merits related to this case might have been lodged before the Inter-American Commission.

31. In earlier opportunities, the Court interpreted the phrase “a case not yet submitted to the Court” contained in Article 63(2) *in fine* of the American Convention to suppose that there was at least the possibility that the matter giving rise to the request for provisional measures could be submitted to the Tribunal’s contentious jurisdiction. In order for this slight possibility to exist, the procedure provided in Articles 44, 46, 47, and 48 of the American Convention must have been commenced before the Commission.<sup>30</sup>

32. The Court has found it necessary to clarify that in view of the protective character of provisional measures (*supra* Considering 5), it is possible under exceptional circumstances that the Court may order provisional measures even where no contentious case exists in the Inter-American System. These situations would be those that *prima facie* could result in a serious and urgent impact on one’s human rights.<sup>31</sup> For that purpose, there must be an assessment of the problem presented, the effectiveness of State actions in the face of the situation described, and the degree of vulnerability that the persons for whom the measures are requested would find themselves were the measures not to be adopted. To achieve this objective, the Inter-American Commission must submit a motion that addresses these criteria, and the State must not be able to clearly and sufficiently demonstrate the effectiveness of the measures it has adopted domestically.<sup>32</sup>

33. On September 3, 2010, the Inter-American Commission requested an extension of the present provisional measures in favor of certain family members and representatives of the beneficiaries,<sup>33</sup> arguing that “different events [...] taken together

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<sup>30</sup> Cf. *Matter of Garcia Uribe et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of February 2, 2006, Considering clauses three and four; *Matter of Natera Balboa*, *supra* note 19, Considering clause six; and *Matter of Alvarado Reyes et al.*, *supra* note 8, Considering clause seven.

<sup>31</sup> Cf. *Matter of the El Rodeo I and El Rodeo II Judicial Confinement Centers*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 8, 2008, Considering clause nine; *Matter of Natera Balboa*, *supra* note 19, Considering clause eight; and *Matter of the Araguan Correctional Facility “Tocorón Prison”*, *supra* note 2, Considering clause seven.

<sup>32</sup> Cf. *Matter of the El Rodeo I and El Rodeo II Judicial Confinement Centers*, *supra* note 31, Considering clause nine; *Matter of Natera Balboa*, *supra* note 19, Considering clause eight; and *Matter of the Araguan Correctional Facility “Tocorón Prison”*, *supra* note 2, Considering clause seven.

<sup>33</sup> In its initial request, the Commission requested the expansion of provisional measures in favor of the following 11 family members of the beneficiaries: José Ángel Alvarado Favela, Obdulia Espinoza, Jaime Alvarado Herrera, Manuel Alvarado Herrera, Patricia Reyes Rueda, María de Jesús Alvarado Espinoza, Mitzi Paola Alvarado Espinoza, Daisy Alvarado Espinoza, Michelle Urrutia Alvarado, Johana Alvarado Espinoza, and José Ángel Alvarado Espinoza. Later, in its response to the President of the Court’s request for additional information (*supra* Having Seen 9), the Commission extended its initial request, asking for the expansion of provisional measures in favor of 24 family members by virtue of having added the following persons: Alan Alvarado Reyes, Adrián Alvarado Reyes, Manuel Reyes, Angélica Alvarado Espinoza, Concepción Herrera Hernández, Rosa Olivia Alvarado Herrera, Karina Paola Alvarado Alvarado, Fabián Alvarado Herrera, Feliz García, Nitza Citlali Alvarado Espinoza, Rigoberto Ambriz Marrufo, María de Jesús Espinoza Peinado, and Ascensión Alvarado Favela. The Commission argued that “it [wa]s possible to infer a risk to [the] lives and right to humane treatment” of the nine family members for whom the expansion was requested based on information available at that moment and due to either their kinship or their efforts at searching for the beneficiaries.

and analyzed in relation to the events that gave rise to the present provisional measures" permit the inference that the family members and representatives found themselves in a situation of risk "related to their active participation in the investigatory processes to determine [the beneficiaries'] whereabouts." The Commission also argued that "the nature of the facts denounced in the present case, taken together with indicia regarding the participation of members of the military in the disappearance of the present beneficiaries" placed the family members and representatives in a situation of risk necessitating the expansion of measures in their favor.

34. The Commission noted that acts of harassment have been occurring since the first complaints about the beneficiaries' disappearance, but due to the State's having reported that "the security measures for these persons were the subject of a dialogue with the family members and representatives," the Commission continued to monitor the situation of the family members and the representatives in order to obtain more information on the results of the State's aforementioned efforts "in a manner parallel to the request for provisional measures." The Commission indicated that when it requested information from the State on the situation of the family members and representatives during the procedure for precautionary measures, Mexico remarked in a meeting held on March 10, 2010 that the State authorities present expressed to the family members and representatives that "[they] would give a timely response to each of their requests, carrying out the [necessary] formalities to begin implementing the protective measures."<sup>34</sup> However, the Commission indicated that the State "[had] not present[ed] additional information before the Inter-American Commission on this point" and that once the Commission was made aware of "the continuity of acts of harassment and threats," it decided to request the present extension, bearing in mind that the Inter-American Court had already granted provisional measures in favor of the three disappeared persons. The Commission also noted that Mexico is not opposed to the granting of protective measures in favor of the family members and the representatives, but that from the available information concrete measures had not yet been implemented in their favor. For this reason, the Commission requested this extension of provisional measures "such that the willingness expressed by the State is reflected in specific actions in favor of these persons."

35. In particular, the Inter-American Commission requested that the Court, pursuant to Article 63(2) of the American Convention and Article 27 of the Rules of Procedure of the Court, obligate the state to:

- a) Adopt urgent measures [to] protect [the] life and right to humane treatment [of the proposed beneficiaries];
- b) As a measures designed to ensure non-repetition, investigate the facts that g[ave] rise the present request to extend provisional measures[, and]
- c) Coordinate these provisional measures with the proposed beneficiaries.

#### **a. Regarding the beneficiaries' family members**

36. In particular regarding the family members, the Commission argued that between January and March 2010 and during the proceedings for precautionary measures before it, the following threatening or harassing acts were the subject of a complaint:

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<sup>34</sup> In that meeting, the family members and representatives requested specific protective measures. In relation to the family members, the following was requested: closed-circuit cameras in the beneficiaries' three houses, police protection for highway movements, seven cellular telephones, and psychological treatment for the children of the forcibly disappeared beneficiaries as well as other family members. In relation to the representatives, the following was requested: to provide a cellular telephone to Emilia González Tercero, to place closed-circuit cameras in the headquarters of the CEDEHM and Center for Human Rights of Paso del Norte, and to deliver five radio devices for each of the organizations in charge of representing the victims. (Attachment 1 from the representatives' brief of September 21, 2010).



- a) During a meeting held on January 9, 2010 with military officials regarding the disappearance of the beneficiaries, one general present "took out some pieces of paper resembling a 'case file' and accused María de Jesús Alvarado [and to Rosa Olivia Alvarado Herrera) of having prior criminal convictions for burglary."
- b) On February 4, 2010, "members of the Mexican military" appeared "in a threatening and intimidating way" at Nitza Paola Alvarado Espinoza's place of residence, looking for María de Jesús Alvarado or Ascención Alvarado Favela. There, they interrogated one of Nitza Alvarado's uncles, asking him for the location of Rocío Irene Alvarado Reyes's home, where neighbors later reported that "several soldiers [had] gone."
- c) On February 5, 2010, a military truck arrived at the home of José Ángel Alvarado Herrera, and his mother was asked for "persons who had filed complaints or suits against the army."
- d) A cousin of Nitza Paola Alvarado Espinoza had received a phone call in which an alleged employee of the Presidency of the Municipality of Ascención - where Nitza Paola worked - told him that "they had called him from the army to ask about his position, responsibilities, and he and his family's place of residence."

37. The Commission added that in April 2010, after the State indicated that it would respond to the requests from the petitioners to begin implementing protective measures (*supra* Considering 34), the representatives denounced "the persistent harassment against family members and representatives who ha[d] complained of these events and continue[d] in the search for justice"; in particular, the Commission indicated that they denounced the inadequate treatment on the part of State agents in charge of the investigations and "the continuity of visits from soldiers to the family members' and representatives' residences." In this regard, the Commission declared its "particular worry" over the home visits that Patricia Reyes Rueda, Rocío Irene's mother, had received from military personnel without providing her with any sort of justification for these procedures. The Commission noted similar concern for other situations occurring at the residences of the other two beneficiaries, given that "in at least some of th[ose] visits" express mention was made to the complaints filed against the military. The Commission emphasized that the representatives had referred to new threats against them in their June 24, 2010 brief (*supra* Having Seen 3). Specifically, the Commission referred to the following facts:

- a) On the night of May 4, 2010, three trucks from the Federal Police arrived at the residence of José Ángel Alvarado Herrera and his family "with some 15 people inside," and they remained parked there for "some 15 minutes" while one of them directed its lights towards the house.
- b) On May 17, 2010, Juana Bustamente, who had received a call from Nitza Paola Alvarado Espinoza on February 3, 2010, "[...] received several calls in which she could only hear moaning."
- c) On May 26, 2010, José Ángel Alvarado Favela together with Jaime Alvarado Herrera and Rigoberto Ambriz Marrufo were detained by a military command between Ciudad Juárez and Praxedis for around 30 minutes.

38. Considering the request from the President of the Court (*supra* Having Seen 8), the Inter-American Commission added that "the situation of vulnerability in which the family members and representatives find themselves is aggravated by the lack of concrete results in the search for the beneficiaries," and submitted the following information on the risk level and the degree of kinship with the beneficiaries of the persons for whom the expansion of provisional measures was sought:

- a) The family members of the beneficiary Rocío Irene Alvarado Reyes for whom protective measures were sought are: her mother, Patricia Reyes Rueda; her brothers, Alan Alvarado Reyes and Adrián Alvarado Reyes; and her daughter, Michelle Urrutia Alvarado, who had been "witnesses to [the] disappearance of

Rocío" and who were attacked the day of her disappearance; as well as her grandfather, Manuel Reyes, who participated in the investigation from the Benito Juárez authorities, for which he feared reprisals. It was further added that all these proposed beneficiaries lived in the same residence.

- b) The family members of the beneficiary José Ángel Alvarado Herrera for whom protective measures were sought are: his wife, Obdulia Espinoza Beltrán; his children, Johana Alvarado Espinoza, José Ángel Alvarado Espinoza, and Angélica Alvarado Espinoza; his father, José Ángel Alvarado Favela; his mother, Concepción Herrera Hernández; his siblings, Jaime Alvarado Herrera, Manuel Melquíades Alvarado Herrera, and Rosa Olivia Alvarado Herrera; his niece, Karina Paola Alvarado Alvarado and his nephew, Fabián Alvarado Herrera; as well as his brother-in-law, Feliz García. It was further added that all these proposed beneficiaries lived in the same residence where on May 4, 2010 "federal police showed up [...] to intimidate them" (*supra* Considering 37(a)). Additionally, regarding Obdulia Espinoza, it was noted that she had been a witness to her husband's disappearance, and on May 18, 2010 she received telephone calls "to which she did not wish to respond out of fear." Regarding his siblings Jaime, Manuel Melquíades, and Rosa Olivia Alvarado Herrera, the Commission added that they had all been present in meetings with the authorities.
- c) The family members of the beneficiary Nitza Paola Alvarado Espinoza for whom protective measures were sought are: her daughters, Mitzi Paola Alvarado Espinoza, Nitza Citlali Alvarado Espinoza, and Daisy Alvarado Espinoza, who "ha[d] been displaced to different cities," because their family members feared that something would happen to them due to their relation to the beneficiary; her parents, María de Jesús Espinoza Peinado and Ascensión Alvarado Favela, who they also considered to be at risk due to their kinship; her sister, María de Jesús Alvarado Espinoza and her brother-in-law Rigoberto Ambriz Marrufo, who had participated in the meetings with the State, and being that María de Jesús was also the person who filed the complaint over her sister's disappearance. All of Nitza Paola's family members occupy the same residence.

39. In its observations on the Commission's request (*supra* Having Seen 7), the State argued that "from the facts laid out by the [...] Inter-American Commission, nowhere does it say that there has been any attempt [to attack] the family members of the beneficiaries [such that] their fundamental rights would be placed at risk." Furthermore, the State added that the facts denounced after April 2010 (*supra* Considering 37) "do not denote any relation with the search procedures [in place] for [the present beneficiaries]," and that because of this there is no direct relationship with the subject matter of the present provisional measures. Additionally, the State indicated that SEDENA, the PGR, and the CONAVIM had reported "no knowledge regarding the facts forming the subject matter of the request."<sup>35</sup> However, the State reported the PGR's indication that, owing to its investigative function, "ministerial personnel in charge of the investigations [...] ha[d] had contact with the family members of the victims, [...] always in strict observance of the rights of the victims [as] contained in the federal constitution." Likewise, in November 2010, the SEDNA reported that the Military Prosecutor's Office had visited the residence of Rocío Irene

<sup>35</sup> On that occasion, the State exclaimed that it had requested information "from the different authorities related to the present matter" and that only those indicated above made any statement. From the attachments submitted by the State, together with its brief of observations on the Commission's request to expand provisional measures (*supra* Having Seen 7), it is evident that the Ministry of Governance requested "all the information that they consider[ed] appropriate" regarding the aforementioned request to expand, as well as from all the other authorities listed above: the Chihuahua Womens' Institute, the Chihuahua Attorney General's Office, the Ministry of Public Safety, the Secretary-General of Chihuahua, and the Ministry of Public Safety of Chihuahua (Attachment 1 from the State's brief of September 24, 2010).

Alvarado Reyes with the aim of “staying in touch” with the beneficiaries’ family members. Despite the foregoing, the State declared that “it ma[de] available its telephone numbers, which [the beneficiaries’] families already kn[ew] so that if it were ever to be required by any federal authority, these persons c[ould] verify if this official visit [was] properly based and motivated.” The State insisted that because of the open investigations based on the facts of the present case, “there [was] the possibility that some authorities [would] seek out the families of the beneficiaries so that they [would provide] information for the ongoing investigations.” Regarding the March 10, 2010 request from the proposed beneficiaries that a cell phone be given to Mrs. María de Jesús Alvarado Espinoza, Mexico indicated that this equipment had already been sent but that Mrs. Alvarado Espinoza had not accepted it. The State also noted that it was in the process of making all internal arrangements to provide the proposed beneficiaries with six cellular telephone units and that on two occasions certain family members of the beneficiaries had been provided with means of transportation. Finally, the State stressed its position of “maintaining a good faith” agreement with the beneficiaries and their representatives on “convenient mechanisms to fulfill implementation of the protective measures in their favor.” Thus, when the representatives of the beneficiaries and the family members consider it appropriate, the correct agreed-upon measure will be implemented in order to make good on this issue.

40. Regarding the additional information presented by the Commission (*supra* Considering 38), the State noted that this information “[did] not precisely indicate the risk or imminent gravity” to which the family members of the beneficiaries would be exposed, nor “much less the connection to the protective measures” in the present matter, thus making this information “ambiguous and imprecise.” The State insisted that the necessary elements to determine the gravity and urgency of a situation “[were] not evident from the facts referenced by the [proposed] beneficiaries.” However, the State noted that regarding the events having allegedly occurred on May 4, 2010 (*supra* Considering 37(a) and 38(b)), the Federal Secretariat of Public Safety requested information from the operational sections of the Federal Police, and that when such information were obtained, it would be submitted to the Tribunal.

41. In its October 12, 2010 communication (*supra* Having Seen 4), the Commission added that the facts presented in its request as occurring after April 2010 were to be considered in the context of harassment and intimidation that began in January 2010, days after the beneficiaries’ disappearance, because ever since that date “officials from the military and other entities have shown up at the family members’ domiciles and have, without any sort of satisfactory explanation, inspected those locations and carried out ‘procedures.’” The Commission found the State’s remarks regarding the possibility that the beneficiaries’ families could be sought by the authorities for information as worrisome. In this regard, the Commission stressed that “the visits that both the family members and the representatives of the beneficiaries allege[d] to have received c[ould] not be considered regular in the context of the investigations.” On the contrary, the Commission found that “due to the characteristics [of the visits]; the violent and intimidating attitude; and the entities that appear[ed] at the residences, it [was] possible to infer their threatening nature.”

42. The Tribunal notes that in its observations on the State’s briefs both during the proceedings for precautionary measures before the Commission and during the present proceeding for provisional measures, the representatives have referred to and submitted information on what they consider to be separate acts of harassment and the State’s inability to provide protection for the family members and the representatives. In particular, the representatives stressed that they had met with the State on March 10, 2010 (*supra* Considering 11, 34) and that on that occasion they requested that the State provide them with certain measures of protection, but despite this the State did nothing in their favor. Rather, “on the contrary, the intimidating and harassing acts continue[d].” In addition to the acts already mentioned by the Commission in its

request to expand provisional measures (*supra* Considering 36-37), the representatives have referred to certain instances of allegedly inadequate treatment on the part of State agents in charge of the investigations.<sup>36</sup>

43. Article 63(2) of the Convention requires that in order for the Court to order provisional measures three conditions must be present: i) "extreme gravity"; ii) "urgency"; and iii) the need to "avoid irreparable harm to persons." These three conditions coexist and must be present in every situation in which the Tribunal's intervention is requested.<sup>37</sup>

44. Concerning the present request to expand provisional measures, the Tribunal finds it appropriate to note that, contrary to the State's contentions in its observations,<sup>38</sup> the alleged acts of harassment against the family members and the representatives, submitted to the Court before the adoption of the Court's May 26, 2010 Order, have not been assessed by the Tribunal due to the fact that the Commission's request for provisional measures did not name these proposed beneficiaries therein. Therefore, the Tribunal will now consider those facts or situations that may prove relevant for consideration of the request to expand the provisional measures and that may have been noted by the parties in their briefs prior to the adoption of the present measures. The Court takes into account the Commission's remark in its request to expand provisional measures that the alleged risk in which the proposed beneficiaries find themselves had begun the by time of the first complaints regarding the disappearance were filed (*supra* Considering 34).

45. The Court observes that the Commission and the representatives have described several specific situations that occurred after the filing of the criminal complaint regarding the alleged disappearance of the present beneficiaries. In those situations, alleged members of the federal police and the army showed up at the proposed beneficiaries' residences with intimidating demeanors and making a show of force (*supra* Considering 36(b), 36(c), 37, 37(a)), for which the State offered no explanation at all. In that regard, the Court considers the State's remark that the ministerial authorities that had had contact with the family members did so "always in strict observance of the rights of the victims [as] contained in the federal constitution," but the State did not explain the reason for the several visits from these military officials, who the proposed beneficiaries have identified as those allegedly responsible for the disappearance of their relatives from their own residences. The State only indicated that the State authorities, including the Ministry of National Defense (SEDENA), were unaware of the facts complained of in the request (*supra* Considering 39), even though

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<sup>36</sup> From the case file on the present provisional measures, the representatives reported, *inter alia*, regarding a situation that occurred in April 2010 when the FEVIMTRA requested the presence of Obdulia Espinoza, María de Jesús Alvarado, and Jaime Alvarado without notifying any of their legal representatives regarding the formality that was to take place. Despite this, these persons appeared on April 8, 2010 at the FEVIMTRA offices together with their representatives. The representatives indicated that the officials from that prosecutorial office apparently did not want to allow their passage into the offices as well, arguing that the appointment was only with the family members. During this meeting, one of the FEVIMTRA officials made "completely out of place" comments such as when he "repeatedly stomped on the office's floor and asked [them]: Do you hear how a hole sounds? Do you hear it? ...This house we seized from Amado Carillo (a powerful and well-known drug trafficker in Mexico) and it sounds like that because this place is packed with cellars." In their May 21, 2010 brief, the State confirmed that the meeting had taken place; however, it did not refer to the representatives remarks on this point.

<sup>37</sup> *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 clause fourteen; Case of 19 Tradesmen, supra* note 3, Considering clause two; and *Matter of the Araguan Correctional Facility "Tocorón Prison", supra* note 2, Considering clause eight.

<sup>38</sup> In its observations on the request to expand provisional measures, the State specifically referred only to the facts the Commission mentioned as "recent information" (those facts that were the substance of complaints lodged after April 2010), considering that it was "that [information] that had not been assessed by the Inter-American Court."

the same institution later confirmed having undertaken at least one of these visits, indicating that it was in order to stay in touch with the beneficiaries' family members (*supra* Considering 37, 39). Likewise, the Tribunal notes that the various instances in which the family members have felt harassed or threatened have been related to a complaint, investigation, or interrogation on the part of State authorities regarding the alleged forced disappearance of their relatives. The Court finds that the development of the investigations and the need to require information from the family members for the same do not justify or constitute a sufficient reason for the apparently repeated visits from State authorities to the proposed beneficiaries' residences, much less from the authorities that these proposed beneficiaries had identified as possibly responsible for the disappearance of their family members.

46. Additionally, the Court notes that several of the proposed beneficiaries had witnessed the alleged arbitrary detentions of their family members supposedly at the hands of military officials (*supra* Considering 38(a), 38(b)) and had denounced them. Several of these relatives also participated in the search for the beneficiaries during the dates immediately following their alleged disappearance<sup>39</sup> because they were later required to do so by alleged military officials (*supra* Considering 36(b), 36(c)). Although not all the proposed beneficiaries participated actively in the search and denunciation of the beneficiaries' disappearance, the Tribunal regards the situations described to be of such a nature that they extend to the rest of the family, especially if one considers the fact that all the proposed beneficiaries share a living space with at least one other family member involved in the investigation. The same is true with their respective disappeared family members, from which it is evident that they could all potentially be at risk. The Court also takes note that the State has continually expressed its willingness to reach an agreement with the family members and their representatives regarding the steps necessary to implement protective measures for them. In that regard, the Court observes that in the meeting held with the petitioners on March 10, 2010 the petitioners conducted a series of requests relating to specific protective measures for the family members, to which the State authorities responded that "regarding the requested measures of protection, it [was] report[ed] that they [would] commence with the procedures appropriate to their implementation." In this regard, the Tribunal notes that the State had reported that it was in the course of delivering cellular telephone units to the proposed beneficiaries in accordance with the family members' request in the aforementioned meeting (*supra* Considering 39).

47. The Court recalls that the urgency required for the adoption of provisional measures refers to special and exceptional situations that require and merit immediate actions and responses directed at eliminating the threat. It is a matter of circumstances that by their very nature imply an imminent risk, and from the urgent nature of the threat one derives the nature of the response to remedy it. This must above all suppose an immediate and, in principle, a temporary response to the situation given that the failure to respond would constitute a danger *per se*.<sup>40</sup> Also, in matters such as the present, the extreme gravity of the threat must be assessed according to the specific context because it is evident that if fundamental rights like one's life or physical integrity are compromised by this type of threat, in principle one is confronted with a situation that merits consideration for the adoption of protective measures.<sup>41</sup> In

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<sup>39</sup> Cf. *Case of Alvarado Reyes et al.*, *supra* note 8, Considering clause ten.

<sup>40</sup> Cf. *Matter of El Rodeo I and El Rodeo II Judicial Confinement Centers*, *supra* note 31, Considering clause eighteen; *Matter of Natera Balboa*, *supra* note 19, Considering clause ten; and *Matter of Alvarado Reyes et al.*, *supra* note 8, Considering clause nine.

<sup>41</sup> Cf. *Matter of El Rodeo I and El Rodeo II Judicial Confinement Centers*, *supra* note 31, Considering clause seventeen; *Case of Kawas Fernández*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 29, 2008, Considering clause six; and *Matter of Pérez Torres et al.* ("*Campo Algodonero*"). Provisional Measures regarding Mexico. Order of the President of the Inter-American Court of Human Rights of April 24, 2009, Considering clause eleven.

the present case, the irreparable nature of the extremely serious and urgent risk relates to the rights to life and humane treatment of the beneficiaries' family members.

48. By virtue of the preceding considerations, the Tribunal finds that the situations described reveal a *prima facie* situation of extreme gravity and urgency that justify the adoption of protective measures in order to avoid irreparable harm to persons. Consequently, the Court finds it necessary for the State to adopt the measures necessary to protect the lives and right to humane treatment of the aforementioned family members of Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera.

#### **b. Regarding the representatives of the beneficiaries**

49. Concerning the representatives' situation, in addition to the arguments already presented (*supra* Considering 33-34), the Inter-American Commission observed that the State had not reported on the measures of protection it implemented in favor of the family members and representatives, nor on its follow-up activities after the meetings of March 10 and May 19, 2010 (*supra* Considering 11, 15, 34). The Commission was of the position that the risk to the proposed beneficiaries had to be considered in the context of harassment and intimidation that began in January 2010, which "[i]n accordance with the most recent facts, [...] would now be extended to the representatives of the beneficiaries."

50. In particular, in the Commission's response to President of the Court's request for additional, specific information (*supra* Having Seen 9), it attached the following information submitted by the representatives relating to the risk they face:

- a) The representatives of the beneficiaries for whom the expansion of the present provisional measures was sought were: from the Commission of Solidarity and Defense of Human Rights (COSYDDHAC), Fr. Javier Ávila, S.J., President, and Emilia González Tercero; from the Center for Human Rights of Paso del Norte, Fr. Oscar Enríquez, Francisca Galván, and Patricia Galarza Gándara; and from the Women's Human Rights Center (CEDEHM), Luz Esthela Castro Rodríguez, General Coordinator, and Brenda Andazola.
- b) Specifically, regarding the aforementioned representatives they indicated, among other things, that Luz Esthela Castro Rodríguez, Emilia González Tercero, and Francisca Galván were lawyers and representatives in the Alvarado case, for which reason they have "accompanied the Alvarado family to meetings with the State, where members of the military [have] be[en] present." Francisca Galván and Patricia Galarza Gándara have also requested copies of the case file before the PGR; while Brenda Andazola is responsible for following the Alvarado case, as well as any communications arising therefrom, which has the effect of placing her in a vulnerable position.
- c) The "violence, military occupation, and impunity [in the state of Chihuahua] has raised the danger to women working for organizations in the defense of human rights." Violations to human rights as well as police and military abuse have risen, while "[n]o official has been handed over or sentenced for these crimes." Quite the opposite, "citizen complaints are frequently followed by harassment on the part of the authorities." The representatives indicated that in this context of violence, human rights defenders "face a great risk and are constantly threatened" especially since some of these "threats have been carried out."<sup>42</sup>

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<sup>42</sup> In this regard, they provided information in support of this contention, among which are included statistics from homicides allegedly having occurred in Chihuahua in 2010. They also spoke of facts relating to the alleged homicides of a human rights defender in January 2010 "who also complained of military abuses in Juárez" and a journalist in September 2010. They also referred to constant threats to a defender

- d) The organizations CEDEHM, COSYDDHAC, and the Center for Human Rights of Paso del Norte provide assistance and representation in cases of "torture, forced disappearance, and home invasion on the part of police and the military," which would place their members in a constant situation of greater vulnerability and higher risk. They added that several of the representatives reside in Ciudad Juárez "where federal police and military officials have conducted several visits to intimidate them."
- e) After the international complaint was filed in the Alvarado case, two events occurred on the grounds of CEDEHM and the Center of Paso del Norte "that have not been investigated." In this regard, the representatives indicated that the CEDEHM locations in Chihuahua "were raided, several electronic devices were seized, and one office window was broken." Furthermore, they noted that on April 30, 2010, the family members and representatives participated in a protest in support of disappeared women after which blankets with the missing women's faces were placed at the site of the Center for Human Rights of Paso del Norte. On May 9, 2010, the blankets corresponding to Nitza Paola and Rocio Irene Alvarado had disappeared from these offices.

51. Regarding the expansion of provisional measures in favor of the representatives, the State observed that from the events that conformed with the factual basis for the Commission's request, "no reference could be found" to the representatives' situation for whom the request was being lodged. The State added that no concrete facts had been presented to support the motion to expand the measures in favor of these persons, nor was it ever said that any one of them had been the victim "of any act of aggression and/or threat" based on the present matter. Thus, the State found that "the situation of extreme gravity and urgency that [the representatives] [were] liv[ing through] [was] unfounded." Additionally, the State stressed that Ms. Luz Esthela Castro Rodriguez and the other members of the Women's Human Rights Center are already beneficiaries of precautionary measures ordered by the Inter-American Commission on June 13, 2008, which "the State has [already] implemented."<sup>43</sup>

52. Concerning the additional information on the representatives presented by the Commission (*supra* Considering 50), the State noted that the alleged situation of violence in the State of Chihuahua and the reference to the representatives' activities (*supra* Considering 50(c), 50(d)) constituted information "of a general and imprecise nature," which held no evident link with the present provisional measures. In relation to the alleged visits on the part of federal police and the military to intimidate various representatives (*supra* Considering 50(d)), the State requested that the Commission specify the acts of harassment to which these persons were allegedly subjected "[so that they would] be able to provide punctual information on the particulars." Regarding the events that occurred in the CEDEHM offices and the Center for Human Rights of Paso del Norte (*supra* Considering 50(e)), the State indicated that the emergency button that had been installed outside the CEDEHM headquarters as part of the framework for precautionary measures granted in their favor (*supra* Considering 51) had not been activated on April 5, 2010 when the alleged theft took place. In that regard, the State noted that even though the CEDEHM members had not communicated any act that had placed their lives or right to humane treatment in jeopardy, the PGJE had reported that the complaint filed for larceny was submitted to it the next day and

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"of the right to land for indigenous communities" which culminated in the placing of a bomb at her office, "the shooting of her daughter," and the murder of her husband on March 1, 2010.

<sup>43</sup> The State indicated that the measures implemented as part of the aforementioned precautionary measures to protect the life and integrity of these beneficiaries consisted in: five cellular telephones with encryption capabilities; emergency contact information for municipal, local, and federal police; patrols by the Chihuahua Ministry of Public Safety; an emergency panic button on the outside of the CEDEHM offices under the auspices of the Chihuahua Ministry of Public Safety; tinted glass at the CEDEHM; and a system of closed-circuit cameras and an automatic lock on the main access door at CEDEHM.

that the principal investigatory theory was "a casual theft derived from the perpetrator's clear property interest" because up until that point there been no elements to establish a causal relationship between the theft and the work of the proposed beneficiaries or with the present provisional measures. Finally, in relation to the disappearance of the aforementioned blankets, the State indicated that the representatives had not filed the respective criminal complaint.

53. For their part, the representatives in their September 21, 2010 (*supra* Having Seen 3) brief indicated that "the acts of harassment against [us] ha[d] increased" in the face of the "total lack of State protection" and the failure to investigate the Alvarados' disappearance. For this reason, the representatives requested that their level of risk and the acts of harassment they had faced be taken into account when considering the extension of provisional measures in their favor.

54. In particular, the representatives argued that on July 27, 2010 a group of approximately 10 uniformed and armed military officials arrived at the residence of Ms. Emilia González Tercero, one of the representatives for whom the expansion of provisional measures was sought, "with the aim of intimidating her." These men exclaiming in a mocking manner "how hidden your house is" and proceeded to photograph the residence's exterior and give her a notice to appear at military camp 5-C. The representatives highlighted the manner in which this was done, with particular emphasis on the brandishing of weapons, which is an inexplicable way to issue a subpoena to a human rights defender and constituted "an obvious act of harassment." They added that the investigation for which she was summoned to testify had allegedly begun due to a journalistic piece from June 2009 in which Ms. González Tercero had filed a complaint for harassment against the military. The representatives found it highly irregular that Ms. González Tercero would be subpoenaed in relation to these events a full year later, especially when according to official information from the SEDENA, that Ministry did not have any record of "any preliminary investigation begun in Chihuahua state dating from January 2009 [to September 2, 2010 that would have] been given impetus by the publication of any journalistic article." The representatives later noted that because of that subpoena, Ms. González Tercero was obligated to testify before the Military Prosecutor. According to the representatives, the actions on the part of the military were linked to Emilia González's work in defense of human rights and to her representation in the Alvarado case; it is "illogical" that she would be subpoenaed merely to ratify a complaint which, although made public was never formally ratified, and that the subpoena would issue one full year after the fact and immediately on the heels of the submission of her petition to the Inter-American System.

55. The representatives insisted that the "acts of harassment and waste - via invitations to fruitless meetings in military installations - to which they are subject" constitute a form of pressure so that they cease their representation of the Alvarados, their complaints about military abuse, and their action before the Inter-American System. Additionally, the representatives indicated that in the context of discrimination against women, the lack of access to justice and the vulnerability of journalists and human rights defenders in Chihuahua "are undeniable," which affects and increases the risk they face.

56. Regarding the representatives' arguments, the State noted that from this it was only clear that Emilia González Tercero had been subpoenaed on one occasion; the State then affirmed that at the moment of that subpoena no type of threat or intimidation had occurred. The State added that SEDENA had reported that the Military Prosecutor's Office had effectively opened an investigation based on a journalistic note in which the representative argued that a violation of her human rights on the part of the military had occurred. The State pointed to certain procedures that it had advanced in the framework of this investigation, including taking the representative's



statement, which had been taken in the presence of civilian authorities at the FEVIMTRA offices. The State concluded that these events were being duly investigated and “[were] not related to the protective measures.” The State also insisted that there has been no presentation of specific facts under which the representatives for whom the expansion of provisional measures is sought have been victims of any act of aggression and/or threat based on the case of the alleged disappearance of the Alvarados.

57. In its October 12, 2010 brief, the Commission added that the facts noted by the representatives as having occurred to the detriment of the representative Emilia González Tercero “incorporate[d] greater indications of the irregularity of the visit to her residence [...] which [would] permit a presumption [in favor of] the intent to harass the proposed beneficiary.” The Commission observed that the source of the risk for the representatives and the family members in the present matter derived from their constant efforts in search of the beneficiaries and the internal impetus so that the investigations were conducted in an adequate manner and in accordance with the gravity of the situation; this “imply[ed] constant[ly] [filing] complaints [over] indications of military participation in the beneficiaries’ disappearance, which would have given rise to a context of harassment precisely on the part of the military.” In accordance with the Commission’s position, this context is made up of a series of events which, when taken together and under a *prima facie* assessment standard, would permit inferring the existence of a situation posing a risk to the lives and integrity of those who have been involved in that activity, including the representatives. Lastly, the Commission clarified that Luz Esthela Castro Rodríguez is effectively one of the beneficiaries of precautionary measures MC-147-08, in force since June 13, 2008 in favor of the members of the CEDEHM and the organization “Our Daughters Back Home.” The Commission explained that the facts that gave rise to these measures made reference to a series of threats received by these organizations due to their advocacy efforts in addressing violence against women in Ciudad Juárez; but without prejudice to the foregoing, the Commission considered it appropriate to include Ms. Castro Rodríguez in the present request to extend provisional measure because of the direct link between herself and the Alvarados’ case, as well as her activities representing and counseling Emilia González Tercero for the alleged harassment she has received. Ms. Castro Rodríguez is also included due to the fact that those aforementioned precautionary measures “were issued in relation to several of the organizations’ members for threats allegedly linked to other activities.”

58. The Court finds it appropriate to recall that when dealing with provisional measures, the Court must limit its consideration strictly to those arguments that are directly related to the extreme gravity, urgency, and the need to avoid irreparable harm to persons. Any other fact or argument may only be analyzed and resolved during the consideration of the case on the merits.<sup>44</sup> In this regard, the adoption of provisional measures does not imply any eventual decision on the merits of the controversy at issue between the petitioners and the State if the case were to finally come before the Court, nor does it prejudge State liability for the subject matter of the complaint.<sup>45</sup>

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<sup>44</sup> 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 Peace Community of San José de Apartadó*, *supra* note 28, Considering clause six; and *Matter of Gladys Lanza Ochoa*, *supra* note 2, Considering clause seven.

<sup>45</sup> Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the President of the Inter-American Court of Human Rights of July 13, 1998, Considering clause six; *Matter of Wong Ho Wing*. Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering clause ten; and *Matter of the Aragua Correctional Facility “Tocorón Prison,” supra* note 2, Considering clause fifteen.

59. The Tribunal observes that the representatives argued for the existence of an environment of violence, impunity, and discrimination in the State of Chihuahua as one of the constitutive elements of the alleged risk they face (*supra* Considering 50(c), 50(d), 55), and the State did not deny the existence of the same, but rather argued that this information was imprecise due to the failure to present concrete facts demonstrating the specific risk the representatives encounter.

60. In this regard, the Court recalls that in order to determine whether a situation of extreme gravity and urgency in avoiding irreparable harm exists, it may assess the sum total of political, historical, cultural, or any other sort of factors affecting the beneficiary that would place him or her in a vulnerable situation at any point in time, exposing his or her rights to possible infringement. This situation may grow or diminish in time depending on innumerable variables, but as was noted, only extreme and urgent situations shall be deserving of protection by way of provisional measures.

61. On the one hand, there may be a nexus of factors or circumstances showing serious aggressions against a group of persons in particular that situate these persons in a situation of extreme gravity and urgency in suffering irreparable damages. In this extreme situation, for instance, a series of serious attacks against the group to which the beneficiary belongs reasonably showing that the beneficiary could also be attacked could serve to justify the granting of provisional measures even without a direct threat to the beneficiary. The assessment of the existence of this factual nexus is distinct from the assessment that occurs in a decision on the merits, wherein the attribution of the State's international liability for carrying out or tolerating such conduct is at issue. The procedure for provisional measures is only aimed at verifying whether risk exists in a particular moment and this procedure does not consist in prejudging the case or the merits of any issue.

62. On the other hand, a situation not of the above-described character (*supra* Considering 61) may exist, and by itself it may not represent extreme gravity and urgency in suffering irreparable harm for a particular group. In such a case, that situation would only serve to assess any concrete threat that may have presented itself against the beneficiary and not to justify in itself the concession or maintenance of provisional measures.<sup>46</sup>

63. In the present matter, the Court finds that the information proffered does not permit the conclusion that the alleged context of violence and impunity constitutes a situation such as that described in Considering clause 61. Consequently, the alleged context does not justify *per se* the granting of provisional measures in favor of the representatives; that is, such a context is not a sufficient basis upon which to expand provisional measures in the absence of concrete facts that would permit conclusions consistent with the alluded-to effects of this context in the matter at issue.

64. In that regard, the Tribunal notes that the concrete factual elements referred to regarding the representatives (*supra* Considering 50), with the exception of those addressing the situation of Emilia González Tercero (*supra* Considering 54), do not appear to constitute, *prima facie*, effects of the alleged environment of violence, discrimination, and intimidation against human rights defenders in the specific matter at issue. Additionally, from the information submitted to the Tribunal, the relationship between the aforementioned larceny of electronic appliances from the CEDEHM headquarters and the organization's representation of the beneficiaries and family

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<sup>46</sup> Cf. *Matter of Carlos Nieto et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of January 26, 2009, Considering clause nineteen; *Matter of Luis Uzcátegui.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of January 27, 2009, Considering clause twenty-three; and *Matter of Liliana Ortega et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 9, 2009, Considering clause twenty-four.

members is not apparent, nor can there be said to exist a situation of extreme gravity and urgency to the detriment of the representatives because of the disappearance of the photographs of Nitza Paola and Rocío Irene Alvarado from the offices of the Center for Human Rights of Paso del Norte (*supra* Considering 50(e)).

65. Regarding the representative Emilia González Tercero, the Court notes that she had been the target of particular intimidation on the part of military officials consistent with the same pattern of intimidating visits that were conducted against the family members (*supra* Considering 54) a short time after the adoption of provisional measures in the present case. The Tribunal acknowledges the State's information that the subpoena in that case was related to a properly constituted investigation, but at the same time it notes that the same State institution that reported on that investigation in the State's name - that is, SEDENA - had provided contrary information to the representatives. The Court likewise observes the State's remark that the subpoena was served without any sort of threat or intimidation; however, the manner in which service was carried out (which the State did not deny) and the lack of clarity regarding the circumstances related to the commencement of that investigation could constitute *prima facie* an act or form of intimidation.

66. Therefore, the Court finds that this concrete fact together with the alleged context of harassment and violence against human rights defenders, which has not been denied by the State, constitute *prima facie* evidence of a situation of extreme gravity and urgency that could give rise to irreparable harm to the lives and right to humane treatment of Emilia González Tercero, for which the Tribunal believes it appropriate to expand provisional measures to include her. However, based on the information provided, the Tribunal finds that a *prima facie* situation of extreme gravity and urgency leading to possible irreparable harm to the rights of the remaining representatives in the present case is not justified. Thus, the Court will not expand provisional measures in their favor at this time.

67. Without prejudice to the foregoing considerations, the Court deems it appropriate to recall that Article 1(1) of the Convention establishes the general obligations of State Parties to respect the rights and freedoms enshrined therein and to guarantee their free and full exercise to all persons subject to their jurisdiction. These provisions apply not only in relation to State power, but also with respect to third parties.<sup>47</sup>

68. The Tribunal also stresses the State's special duty to protect those persons working in non-governmental organizations as well as other groups or individuals who work in the defense of human rights because their labor constitutes a positive and complementary contribution to the State's efforts in its position as guarantor of the rights of all persons subject to its jurisdiction.

69. The State must carry out the relevant procedures such that the provisional measures mandated in this Order are planned and executed together with the participation of the beneficiaries of the same or their representatives in order that they be implemented in a timely and effective manner, keeping in mind their special protective needs consistent with the specific circumstances of every case. The Court stresses that the positive participation of the State and, particularly, of the representatives is essential in order to coordinate the implementation of provisional measures in this case.

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<sup>47</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 28, Considering clause three; *Matter of the Peace Community of San José de Apartadó*, *supra* note 28, Considering clause twenty-three; and *Matter of the Araguán Correctional Facility "Tocorón Prison," supra* note 2, Considering clause thirteen.

**THEREFORE:****THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

in exercise of the authority conferred upon it by Article 63(2) of the American Convention on Human Rights and Articles 27 and 31 of the Rules of Procedure of the Court,

**DECIDES:**

1. To reiterate that the State immediately adopt whatever measures necessary to promptly ascertain the whereabouts of Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera, as well as measures for the protection of their lives, right to humane treatment, and personal freedom.
2. To reiterate that the State immediately adopt immediately adopt whatever measures necessary to protect the lives and right to humane treatment of Patricia Reyes Rueda, Alan Alvarado Reyes, Adrián Alvarado Reyes, Michelle Urrutia Alvarado, Manuel Reyes, Obdulia Espinoza Beltrán, Johana Alvarado Espinoza, José Ángel Alvarado Espinoza, Angélica Alvarado Espinoza, José Ángel Alvarado Favela, Concepción Herrera Hernández, Jaime Alvarado Herrera, Manuel Melquíades Alvarado Herrera, Rosa Olivia Alvarado Herrera, Karina Paola Alvarado Alvarado, Fabián Alvarado Herrera, Feliz García, Mitzi Paola Alvarado Espinoza, Nitza Citlali Alvarado Espinoza, Daisy Alvarado Espinoza, María de Jesús Alvarado Espinoza, Rigoberto Ambriz Marrufo, María de Jesús Espinoza Peinado, and Ascensión Alvarado Favela pursuant to the provisions of Considering clauses 43-48 of this Order.
3. To require that the State immediately adopt whatever measures necessary to protect the rights to life and humane treatment of Emilia González Tercero pursuant to the provisions of Considering clauses 65-66 of the present Order.
4. To reject the request to broaden the present provisional measures in favor of Patricia Galarza Gándara, Brenda Andazola, Luz Esthela Castro Rodríguez, Oscar Enríquez, Javier Ávila Aguirre, and Francisca Galván pursuant to the provisions of Considering clauses 58-66 of this decision.
5. To require that the State undertake all appropriate procedures to ensure that the protective measures contained in this Order are planned and carried out with the participation of the beneficiaries or their representatives and with an aim towards their swift and effective implementation. The State must also keep the beneficiaries or their representatives informed as to progress in their execution.
6. To request that the State report to the Inter-American Court of Human Rights by January 31, 2011 regarding the orders contained in Operative paragraphs 1-3 of this Order as well as that it present the information required in Considering clauses 20 and 24 of the same.
7. To request that, following presentation of the brief mentioned in the previous Operative paragraph, the State continue to provide information to the Inter-American Court of Human Rights on the status of implementation of these provisional measures every two months from the date of receipt of that brief.
8. To request that the representatives of the beneficiaries and the Inter-American Commission on Human Rights submit their relevant observations on the State's briefs

mentioned in Operative paragraphs 6 and 7 of this Order within four and six weeks, respectively. The deadline for receipt of these briefs shall be counted from the date of receipt of the State's documents.

9. To require that the Secretariat of the Court serve notice of the present Order on the State, the Inter-American Commission on Human Rights, and the representatives of the beneficiaries.

Diego García-Sayán  
President

Leonardo A. Franco

Manuel E. 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