

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 15, 2011**

**PROVISIONAL MEASURES
WITH REGARD TO THE UNITED MEXICAN STATES**

MATTER OF ALVARADO REYES *ET AL.*

HAVING SEEN:

1. The Orders issued by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) on May 26 and November 26, 2010, whereby the Court ordered provisional measures and supervised their execution in the present matter. In the latter Order, the Court decided, *inter alia*:

1. To reiterate to the State that it [should] adopt immediately all necessary measures to ascertain promptly the whereabouts of Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera, and to protect their life, and personal integrity and liberty.

2. To require the State to adopt immediately all necessary measures to protect the life and physical integrity of [24 next of kin of Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera].

3. To require the State to adopt immediately all necessary measures to protect the life and physical integrity of Emilia González Tercero [...].

4. To reject the request to extend these provisional measures to include Patricia Galarza Gándara, Brenda Andazola, Luz Esthela Castro Rodríguez, Oscar Enríquez, Javier Ávila Aguirre, and Francisca Galván [...].

5. To require the State to take all pertinent measures to ensure that the measures of protection required in [the] Order are planned and carried out with the participation of the beneficiaries or their representatives so that the said measures are provided diligently and effectively and, in general, to keep them informed about any progress in the implementation of the measures.

[...]

2. The communication of February 11, 2011, whereby the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) advised the Court of new alleged threats against the beneficiaries, owing to which “the members of the Alvarado family had left their homes and jobs and had gone into hiding” (*infra* having seen paragraph 7(d)).

3. The note of February 15, 2011, in which the Secretariat of the Court (hereinafter “the Secretariat”), on the instructions of the President of the Court (hereinafter “the President”), asked the United Mexican States (hereinafter “the State” or “Mexico”) to submit any information it considered pertinent concerning the new facts alleged by the Commission in its next report on the implementation of the present measures (*supra* having seen paragraph 2).
4. The brief of February 21, 2011, and its attachment, in which the State forwarded a report on the implementation of the present measures.
5. The note of March 2, 2011, in which, on the instructions of the President, the Secretariat asked the State to submit specific information in its next report on the implementation of these measures, since it had not done so in its report of February 21, 2011 (*supra* having seen paragraph 4).
6. The brief and its attachment of March 16, 2011, in which the Commission asked for an expansion of the present provisional measures in favor of nine next of kin and six representatives of the beneficiaries.
7. The alleged facts upon which the Inter-American Commission based its request to expand the measures:
 - a) On January 24, 2011, armed members of the federal police, in uniform, went to the home of the beneficiary, José Ángel Alvarado Favela, together with officials from the local office in Ciudad Juárez of the Attorney General’s Office. The police attempted to detain the said beneficiary because “he had filed an application for *amparo* in order to find José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza, and Rocío Irene Alvarado Reyes,” which required him “to go to the said local office in order to provide information on the whereabouts of his next of kin.” Mr. Alvarado Favela expressed his fear of the uniformed officers and told them that it was the state officials who should provide information on his missing next of kin;
 - b) On January 28, 2011, Mr. Alvarado Favela, accompanied by his representatives Luz Esthela Castro and Gabino Gómez, went to the Attorney General’s Office, having complied with the general requirements for access. Despite this, they were told that, in order to be allowed access, additional information was required together with photographs of Mr. Alvarado Favela. The latter and his representatives decided not to allow their photographs or their fingerprints to be taken and left the office;
 - c) On January 29, 2011, federal police and officials from the Attorney General’s Office visited Mr. Alvarado Favela’s home again. On not finding him there, the officials proceeded to photograph his house and the surrounding areas;
 - d) On January 29, 2011, Mr. Alvarado Favela received a call on his mobile phone during which a man told him: “We have your son and he is alive; we’re going to kill you and your children like dogs; you have 12 hours to leave your house and the city, otherwise we will kill everyone because you’ve been talking too much.” After this call, the Alvarado family left their homes and jobs and “[are] in hiding.”
8. The Commission’s arguments in support of its request to expand provisional measures, including:

- a) The next of kin for whom this expansion is requested are part of the same household as the current beneficiaries and, therefore, find themselves in the same situation of extreme gravity, urgency, and risk of irreparable harm;
- b) The said next of kin, mainly children, have been directly affected by “the extreme measures that the beneficiaries have had to adopt in order to safeguard their life and physical integrity” in the face of continued acts of intimidation and threats against them;
- c) From the language used in the threatening phone call, it is apparent that the aim is to silence those who are publicly denouncing the disappearance of the original beneficiaries and the alleged participation of military officials in these events, and to prevent the investigation from continuing;
- d) The representatives in whose favor an expansion of the present measures is being sought have played “an active role not only in the context of processing the provisional measures at the international level, but they have [also] continued to denounce the facts at the domestic level” and, in this regard, they “make written submissions” to various authorities and appear before them to support the Alvarado family. Consequently, they experience a “high level of exposure” as the driving force behind the internal investigations and the measures of protection before the organs of the inter-American system;
- e) The threat that the beneficiary, Mr. Alvarado Favela, received on his mobile phone occurred after his January 28, 2011, visit to the Attorney General’s Office accompanied by his representatives and proposed beneficiaries, Luz Esthela Castro and Gabino Gómez;
- f) The next of kin and the representatives have participated jointly in the activities of filing complaints and demanding justice. The latter accompany and provide support for the actions taken by the next of kin;
- g) At least one of the representatives who has taken part in these activities, the beneficiary Emilia González Tercero, has been a direct victim of harassment and acts of intimidation, “which reinforces the previous indications that the risk extends to the representatives”; and,
- h) There are contextual factors that “together with the above factors” give rise to a presumption of a situation of risk to the life and physical integrity of the representatives. In particular, the Commission indicated that according to the Office of the United Nations High Commissioner for Human Rights, at the national level, Chihuahua ranks first in the number of reported attacks against human rights defenders. In this regard, it indicated that these attacks are of a diverse nature and include “an intense climate of threats and harassment against human rights defenders who carry out their activities in the region.” In this regard, it underscored that in many cases these threats have resulted “in the disappearance and/or murder of human rights defenders, many of whom were active in publicly denouncing abuses by the military in the state of Chihuahua.”

9. The Commission’s request that the Court, pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Article 27 of the Rules of Procedure of the Court¹ (hereinafter “the Rules of Procedure”), require the State:

¹ The Court’s Rules of Procedure approved at its eight-fifth regular session held from November 16 to 29, 2009.

- a) To take immediate steps to protect [the] lives and physical integrity [of the proposed beneficiaries];
- b) To investigate the facts that g[ave] rise to the present request to expand provisional measures as a means of identifying the source of the risk and ensuring a halt to the threats[,] and
- c) To coordinate the provisional measures with the proposed beneficiaries.

10. The State's brief and accompanying attachments of March 25, 2011, as well as the additional attachments presented on March 28, 2011, in which it submitted its observations concerning the request to expand the provisional measures. With regard to the recent threats denounced by the Commission, the State:

- a) Indicated that it had requested information from the different authorities involved in the present matter “[a]s soon as it became aware of the facts” regarding the beneficiary, José Ángel Alvarado Favela, during the February 18, 2011, meeting with the beneficiaries and their representatives. In this regard, the State indicated that it had been agreed to respond to the requests made during this meeting at a later encounter held on March 4, 2011; however, at the that meeting, “it was not possible to reach agreement on key issues for the implementation of provisional measures”;
- b) Stressed “the unwillingness of the beneficiaries to assist in the investigations” conducted by the Attorney General’s Office to ascertain the whereabouts of Rocío Irene, Nitza Paola, and José Ángel Alvarado. In this regard, it said that “even though members of that office approached Mr. Alvarado Favela, he did not wish to collaborate with the investigations, just as he refused to do so [when] he went to the [Attorney General’s] Office”;
- c) Reported that in the meeting on March 4, 2011, following the request for “further information” from the next of kin of the alleged missing persons in order to assist the investigation, the representative Luz Esthela Castro Rodríguez responded that “they have no intention of giving a statement and that the information they had been given [about the investigation] was insufficient.” It added that the representative refused to “record” her observations in the investigation and abandoned the office together with the next of kin of the alleged missing persons “without even signing the record of access to the preliminary inquiry”;
- d) Clarified that it “has no intention of using any of the legal means of coercion available to obtain the beneficiaries’ presence,” and that it was completely willing to provide them with the necessary legal guarantees to adapt the proceedings to their special needs, pursuant to the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power adopted by the United Nations General Assembly, and to ensure their safety when they decide to appear before the authorities, and
- e) Indicated as an example of this willingness, the facilities that the Attorney General’s Office has offered the beneficiaries of the measures so that they can participate in the investigation process, despite which, “for eminently respectable reasons,” the beneficiaries have not participated to the extent “required of them.”

11. In particular, with regard to the request to expand the present provisional measures, Mexico indicated that:

- a) Concerning the next of kin of the beneficiaries, it is “fully prepared to adopt the measures” ordered by the Court and, to this end, the competent authorities have held working meetings with the representatives in which the latter have made specific requests to address the situation of the said beneficiaries. However, it indicated that it has not been possible to reach agreement on the next measures to adopt “owing to the position adopted by the beneficiaries’ representatives” and their unwillingness to come to an agreement with the State about protective measures for the beneficiaries. In this regard, it cited as an example the fact that at the said March 4, 2011, meeting, the representatives withdrew after stating their position, without allowing “the negotiation of the necessary agreements to continue implementing the provisional measures.” In this regard, Mexico “urged the Inter-American Commission to serve as a liaison with the representatives of [the beneficiaries],” because without the necessary communication between the parties, it would be very complicated to establish the necessary measures to guarantee the beneficiaries’ rights, and
- b) Regarding the representatives who have been proposed as beneficiaries of these measures, the facts alleged by the Commission as the factual basis for its request to expand the measures do not contain any reference to their situation. The State considered that the Commission had not presented specific facts to justify the request for measures for these individuals, nor had it indicated that any of them had been the victim of acts of violence or threats because of the present matter. Hence, the situation of extreme gravity and urgency had not been proved. Mexico also noted that the intended beneficiaries, Luz Esthela Castro Rodríguez and the other members of the *Centro de Derechos Humanos de las Mujeres* [Center for Women’s Human Rights] (CEDEHM), are protected by precautionary measures granted by the Inter-American Commission that are duly being implemented.

12. The Inter-American Commission submitted its request for provisional measures at a time when the Court was not in session. Under Article 27(6) of the Rules of Procedure, in these circumstances, the President may require the State in question to adopt such urgent measures as necessary to ensure the effectiveness of any provisional measures the Court may order at its next session. Based on these powers, the President, in an Order of April 1, 2011 (hereinafter “the President’s Order”), decided:

1. To require the State to adopt the necessary measures to protect the rights to life and physical integrity of the following individuals: J.O.A.R., R.G.A.R., S.A.R., and J.E.A.R., children of the beneficiary Jaime Alvarado Herrera; Sandra Luz Rueda Quezada, wife of Jaime Alvarado Herrera; J.G.A., daughter of the beneficiary Rosa Olivia Alvarado Herrera; D.J.A. and J.A., daughters of the beneficiary Manuel Melquíades Alvarado Herrera, and Mayra Daniela Salais Rodríguez, wife of Manuel Melquíades Alvarado Herrera.

2. To reiterate to the State that it must adopt immediately all necessary measures to ascertain promptly the whereabouts of Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera, and to protect their life, and personal integrity and liberty.

3. To reiterate to the State that it must adopt immediately all necessary measures to protect the life and physical integrity of Patricia Reyes Rueda; A.A.R. and A.A.R., children of the beneficiary Patricia Reyes Rueda; M.U.A., daughter of the beneficiary Rocío Irene Alvarado Reyes; Manuel Reyes;

Obdulia Espinoza Beltrán; J.A.E., J.A.A.E., and A.A.E., children of the beneficiaries José Ángel Alvarado Herrera and Obdulia Espinoza Beltrán; José Ángel Alvarado Favela; Concepción Herrera Hernández; Jaime Alvarado Herrera; Manuel Melquíades Alvarado Herrera; Rosa Olivia Alvarado Herrera; K.P.A.A. and F.A.H., children of the beneficiary Rosa Olivia Alvarado Herrera; Feliz García; M.P.A.E., N.C.A.E., and D.A.E., daughters of the beneficiary Nítza Paola Alvarado Espinoza; María de Jesús Alvarado Espinoza; Rigoberto Ambriz Marrufo; María de Jesús Espinoza Peinado, and Ascención Alvarado Favela.

4. To reiterate to the State that it must adopt immediately all necessary measures to protect the life and physical integrity of Emilia González Tercero.

5. To reject the request to expand the present provisional measures to include Patricia Galarza Gándara, Luz Esthela Castro Rodríguez, Oscar Enríquez, Javier Ávila, Francisca Galván and Gabino Gómez, as established in [the said] decision.

6. To require the State to take all pertinent measures to ensure that the protective measures required in [the] Order are planned and carried out with the participation of the beneficiaries or their representatives, so that the said measures are provided diligently and effectively and, in general, to keep them informed of any progress in the implementation of the measures.

7. To convene Mexico, the representatives of the beneficiaries, and the Inter-American Commission on Human Rights to a public hearing to be held at the seat of the Inter-American Court of Human Rights during its next regular session from June 27 to July 9, 2011, in order to hear specific updated information from the State, and the observations of the representatives and the Inter-American Commission on the status of implementation of these provisional measures. [...]

8. To ask the State to provide information to the Inter-American Court of Human Rights by June 1, 2011, at the latest, on the measures adopted to comply with the first operative paragraph of [the] Order.

9. To ask the representatives of the beneficiaries and the Inter-American Commission on Human Rights to present any observations they deem pertinent on the State's report mentioned in the preceding operative paragraph within four and six weeks, respectively. Both time limits to be calculated from the reception [of the] corresponding State report.

[...]

13. The State's brief of April 5, 2011, presenting a bi-monthly report on the implementation of the present measures.

14. The briefs of March 30 and May 6, 2011, and their attachments, in which the representatives presented their observations on the State's reports of February 21 and April 5, 2011 (*supra* first and thirteenth having seen paragraphs). In these briefs, the representatives

indicated, in response to the beneficiaries' supposed lack of collaboration in the investigations and in the implementation of the measures, which was alleged by the State (*supra* having seen paragraphs 10(b) and 10(c)), *inter alia*, the following:

- a) The beneficiaries had formally and exhaustively provided all the information they had concerning the facts of the forced disappearance of their next of kin, which constituted information that was already in the files in the hands of the State.² The representatives underscored that the photographs of the beneficiaries who had allegedly disappeared had been handed over to the Office of the Special Prosecutor for Crimes of Violence against Women and People-Trafficking (FEVIMTRA) approximately one year previously:
- b) “[It is inexplicable that the next of kin who are in hiding and in grave danger owing to death threats are summoned to appear to provide information that has been in the hands of the authorities for months and that appears in the case files.” This demonstrates “carelessness and lack of interest in the investigation”;
- c) At the meeting of March 4, 2011 (*supra* having seen paragraph 10(c)), the next of kin of the beneficiaries who had allegedly disappeared “wept with frustration and the feeling that they had been deceived,” because they had risked their life by coming out of the place where they were hiding to attend the said meeting in the hope of receiving information on the whereabouts of their next of kin or on progress in the investigations. Given the absence of results in the investigations and the attitude of the state authorities who responded to their questions by “intimidating, mistreating and blaming the next of kin [...] for their lack of cooperation,” they decided to leave the Prosecutor’s Office, and
- d) The lack of coordination among the state institutions that hinders or prevents them from having mutual access to the statements made by the next of kin cannot be used as justification to re-victimize and blame the beneficiaries.

CONSIDERING THAT:

1. Mexico has been a State Party to the American Convention since March 24, 1981, and, pursuant to Article 62 of the Convention, accepted the compulsory jurisdiction of the Court on December 16, 1998.
2. Article 63(2) of the American Convention stipulates 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. In this regard, Article 27 of the Court’s Rules of Procedure establishes:

² The representatives explained that the beneficiaries have filed complaints and provided relevant information to the Attorney General’s Office of the state of Chihuahua (PGJE), the office of the Attorney General of the Republic (PGR), the State Human Rights Commission in Ciudad Juárez, and the Program to Attend Complaints of the Chihuahua Joint Operation in Ciudad Juárez. They also filed an application for *amparo* and, on the “only occasion that new facts arose,” the said next of kin went to the PGR and the PGJE to expand their statements and to inform the authorities about the new events related to the telephone call made by the beneficiary Nitza Paola on February 3, 2010.

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.

[...]

5. The Court, or if the Court is not sitting, the Presidency, upon considering that it is possible and necessary to do so, may require the State, the Commission, or the representatives of the beneficiaries to provide information on a request for provisional measures before deciding on the measure requested.

6. If the Court is not sitting, the Presidency, in consultation with the Permanent Commission and, if possible, with the other Judges, shall call upon the State concerned to adopt such urgent measures as may be necessary to ensure the effectiveness of any provisional measures that may be ordered by the Court during its next period of sessions.

[...]

4. The provisions of Article 63(2) of the Convention confer an obligatory nature on the adoption of the provisional measures ordered by the Court, because it is a basic principle of international law, supported by international case law, that the States must comply with their international treaty-based obligations in good faith (*pacta sunt servanda*).³

5. Under international human rights law, provisional measures are not only preventive in nature, in the sense that they preserve a juridical situation, but they are also essentially protective inasmuch as they seek to safeguard human rights and avoid irreparable damage to persons. The measures are applicable provided the basic requirements of extreme gravity and urgency, and the need to prevent irreparable damage to persons are met. Thus, provisional measures become a true jurisdictional guarantee of a preventive nature.⁴

6. According to the Court's Orders of May 26 and November 26, 2010, the State must, *inter alia*, adopt the necessary measures to protect the life and physical integrity of: (i) Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera, all allegedly forcibly disappeared on December 29, 2009; (ii) 24 of their next of kin, and (iii) the representative Emilia González Tercero.

³ Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Inter-American Court of June 14, 1998, sixth considering paragraph; *Case of Caballero Delgado and Santana*. Provisional measures with regard to Colombia. Order of the Inter-American Court of February 25, 2011, third considering paragraph, and *Matter of Mery Naranjo et al.* Provisional measures with regard to Colombia. Order of the Inter-American Court of March 4, 2011, fourth considering paragraph.

⁴ Cf. *Case of the "La Nación" Newspaper*. Provisional measures with regard to Costa Rica. Order of the Inter-American Court of September 7, 2001, fourth considering paragraph; *Matter of Mery Naranjo et al.*, *supra* note 3, fourth considering paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Inter-American Court of Human Rights of March 4, 2011, tenth considering paragraph.

7. On March 16, 2011, the Commission requested the expansion of the present measures in favor of nine family members⁵ and six representatives of the beneficiaries.⁶ The Commission also requested that the identity of the children for whom the measures were requested be excluded from the public record. Therefore, the State has been advised of the names of the proposed beneficiaries of the measures confidentially so that, where appropriate, it may provide them with the protection ordered herein. The Court notes that the State did not refer to the Commission's request (*supra* having seen paragraph 10). Accordingly, in response to the Commission's request and in the absence of any objection, the Court considers it desirable to reiterate the provisions of the President's Order of April 1, 2011, and not to disclose the identity of the children proposed as beneficiaries in this Order, based on the Commission's observations in this regard. Furthermore, this Court, as did its President, notes that according to the case file there are 11 other child beneficiaries who are protected by the provisional measures required by the Court in its Order of November 26, 2010. When the Inter-American Commission requested the expansion of the measures to include those children in 2010, it did not request that their names be kept confidential; consequently, their names were made public in the said Order of November 26, 2010. In this regard, the Court concurs with the decision made by its President, and considers it desirable not to disclose the names of these 11 child beneficiaries in this Order, based on the Commission's current request and to require the latter and the representatives to advise the Court of their views on this issue for the purposes of any subsequent orders.

8. In its Order of November 26, 2010, the Court monitored the implementation of the present provisional measures in favor of the beneficiaries at that time. In the present Order, the Court will analyze exclusively the request to expand the provisional measures in the following order: (i) with regard to the beneficiaries' next of kin and (ii) with regard to the representatives of the beneficiaries. It will also consider the representatives' request for a hearing (*infra* considering paragraphs 26 to 28).

9. The present request to expand the provisional measures is not related to any contentious case currently before the Court, but rather originated from a request for precautionary measures lodged with the Inter-American Commission. The Court has no information to show whether the facts currently before it form part of contentious proceedings before the inter-American system, or whether a petition concerning the merits has been filed before the Inter-American Commission that relates to this request.

10. On previous occasions, the Court has interpreted the phrase "matters not yet submitted to it," contained in Article 63(2) of the Convention, to mean that there is at least a possibility that the matter underlying the request for provisional measures may be submitted to the Court's contentious jurisdiction. For this minimal possibility to exist, the procedure set

⁵ The Commission requested the expansion of the present measures in favor of the following persons: (i) five next of kin of the beneficiary Jaime Alvarado Herrera, namely his wife, Sandra Luz Rueda Quezada and their children J.O.A.R., R.G.A.R., S.A.R., and J.E.A.R.; (ii) one next of kin of the beneficiary Rosa Olivia Alvarado Herrera, her daughter, J.G.A., and (iii) three next of kin of the beneficiary Manuel Melquíades Alvarado Herrera, namely his wife, Mayra Daniela Salais Rodríguez, and their daughters, D.J.A and J.A..

⁶ Namely: Javier Ávila, Oscar Enríquez, Francisca Galván, Patricia Galarza Gándara, Luz Esthela Castro Rodríguez and Gabino Gómez.

forth in Articles 44 and 46 to 48 of the Convention must have been initiated before the Commission.⁷

11. The Court has considered it necessary to clarify that, given the protective nature of provisional measures (*supra* fifth considering paragraph), exceptionally, it may order them even when a contentious case has not been filed before the inter-American system, in situations that, *prima facie*, may have a serious and urgent effect on human rights.⁸ To this end, it is necessary to assess the problem at issue, the effectiveness of the State's actions regarding the situation, and the degree of vulnerability of the persons for whom the measures are requested should they not be adopted. Therefore, the Inter-American Commission must present sufficient justification in relation to the said criteria, and the State must not have demonstrated clearly and sufficiently the effectiveness of any measures it has taken at the domestic level.⁹

12. Article 63(2) of the Convention requires that, for the Court to order provisional measures, three conditions must be present: (i) "extreme gravity"; (ii) "urgency," and (iii) the need to "avoid irreparable damage to persons." These three conditions coexist and must be present in all situations where the Court's intervention is sought.¹⁰

I. Regarding the request to expand the provisional measures to include the beneficiaries' next of kin

13. The Court observes that, in its request to expand the provisional measures, the Commission provided information on a series of events that had befallen the beneficiary José Ángel Alvarado Favela, father of the alleged disappeared person José Ángel Alvarado Herrera, in connection with the investigation into what happened to the beneficiaries who had allegedly disappeared (*supra* having seen paragraph 7). Regarding these events, the Court notes that Mexico has argued an alleged lack of willingness of the representatives and the beneficiaries to collaborate with the investigation, and also takes note of what the representatives have indicated concerning this argument by the State (*supra* having seen paragraph 14). Nevertheless, it observes that the State confirmed that officials from the

⁷ Cf. *Matter of García Uribe et al.* Provisional measures with regard to Mexico. Order of the Inter-American Court of February 2, 2006, third and fourth considering paragraphs; *Matter of Alvarado Reyes et al.* Provisional measures with regard to Mexico. Order of the Inter-American Court of November 26, 2010, thirty-first considering paragraph, and *Matter of José Luis Galdámez Álvarez et al.* Provisional measures with regard to Honduras. Order of the Inter-American Court of February 22, 2011, ninth considering paragraph.

⁸ Cf. *Matter of the Capital Detention Center El Rodeo I and El Rodeo II.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of February 8, 2008, ninth considering paragraph; *Matter of María Lourdes Afiuni.* Provisional measures with regard to Venezuela. Order of the President of the Inter-American Court of December 10, 2010, seventh considering paragraph, and *Matter of the Socio-educational Detention Unit.* Provisional measures with regard to Brazil. Order of the Inter-American Court of February 25, 2011, sixth considering paragraph.

⁹ Cf. *Matter of the Capital Detention Center El Rodeo I and El Rodeo II*, *supra* note 8, ninth considering paragraph; *Matter of María Lourdes Afiuni*, *supra* note 8, seventh considering paragraph, and *Matter of the Socio-educational Detention Unit*, *supra* note 8, sixth considering paragraph.

¹⁰ Cf. *Case of Carpio Nicolle et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, fourteenth considering paragraph; *Matter of the Socio-educational Detention Unit*, *supra* note 8, seventh considering paragraph, and *Matter of Mery Naranjo et al.*, *supra* note 3, tenth considering paragraph.

Attorney General's Office had approached Mr. Alvarado Favela to ask for his statement,¹¹ and that he refused to provide it (*supra* having seen paragraph 10(b)). In this regard, the Court recalls that, in its Order of November 26, 2010, it considered that the different occasions on which family members had reported that they felt harassed or threatened were related to denunciations, investigations or questioning by the State authorities with regard to the alleged forced disappearance of their next of kin.¹² Accordingly, the Court considered that the conduct of the investigations and the need to gather information from the next of kin for that purpose, did not justify or constitute sufficient reason for the apparent repeated visits to the proposed beneficiaries' homes by State authorities, particularly by officials who the proposed beneficiaries had identified as the possible perpetrators of the alleged disappearance of their next of kin.¹³ The Court reiterates these considerations and urges the State to take them into account when implementing actions to determine the whereabouts of the beneficiaries who have allegedly disappeared.

14. The Court also emphasizes that the beneficiaries and their representatives should offer all necessary collaboration to ensure the effective implementation of the measures.¹⁴ The State must take the necessary steps to ensure that the provisional measures required in this Order are planned and implemented with the participation of the beneficiaries or their representatives so that the said measures are offered diligently and effectively. In this regard, the Court underscores the importance of the state authorities establishing clear and direct lines of communication with the beneficiaries that foster the trust required for their adequate protection.

15. Moreover, the Court notes that, owing to the telephone call that the beneficiary José Ángel Alvarado Favela received on January 29, 2011, the members of the Alvarado family left their homes and are in hiding for fear of possible harm to their life and physical integrity (*supra* having seen paragraph 7(d)). The Court also takes into account that those family members for whom this expansion of the measures is sought are the spouses and children of the beneficiaries who are currently presumably in hiding as a result of the said threat. In this regard, the Court recalls that, in its Order of November 26, 2010, when extending the present measures to certain next of kin of the beneficiaries who have allegedly disappeared, the Court considered that the harassment of some of the relatives of the said disappeared beneficiaries was of such a nature as to extend to the other family members; particularly since all the beneficiaries proposed at that time shared a home with some of the family members involved in the investigations, as well as with their respective next of kin who had presumably disappeared. From this, it could be inferred that the family members could potentially be in danger. The Court agrees with the President in finding that those next of kin for whom the

¹¹ The State included the said remarks in its observations. However, the attachments accompanying the State's observations include a note from the Attorney General's Office stating that the its local office in Chihuahua "did not carry out any procedure on the day and at the time mentioned by the beneficiaries of the measures [January 24, 2011], particularly at the home of José Ángel Alvarado Favela, which would have resulted from preparation of the detailed case file [of this matter] under its responsibility."

¹² Cf. *Matter of Alvarado Reyes et al.*, *supra* note 7, forty-fifth considering paragraph.

¹³ Cf. *Matter of Alvarado Reyes et al.*, *supra* note 7, forty-fifth considering paragraph.

¹⁴ Cf. *Case of the Mapiripán Massacre*. Provisional measures with regard to Colombia. Order of the Inter-American Court of September 2, 2010, twentieth considering paragraph; *Matter of the Forensic Anthropology Foundation*. Provisional measures with regard to Guatemala. Order of the Inter-American Court of February 22, 2011, twenty-eighth considering paragraph, and *Case of the Mapiripán Massacre*. Provisional measures with regard to Colombia. Order of the Inter-American Court of March 1, 2011, twenty-eighth considering paragraph.

expansion of the measures is sought on this occasion find themselves in the same situation of potential risk as the next of kin who are presently beneficiaries. Additionally, the Court takes note that the State has not opposed granting provisional measures to the said proposed beneficiaries, but rather has expressed its “full willingness” to adopt the provisional measures that are ordered in this regard (*supra* having seen paragraph 11(a)).

16. The Court recalls that the requirement of urgency for the adoption of provisional measures alludes to special, exceptional situations that merit and require immediate actions and responses aimed at averting the threat. This refers to circumstances that, by their very nature, imply imminent risk. The urgent nature of the threat gives rise to the urgent nature of the response required to remedy it. Above all, this means that the response should be immediate and, in principle, timely to deal with the situation, since the lack of a response would constitute *per se* a danger.¹⁵ Also, in situations such as the present one, the extreme gravity of the threat must be evaluated in function of the specific context, mindful that if fundamental rights such as the right to life and to physical integrity are jeopardized by this sort of threat, in principle, a context exists that merits considering the adoption of protective measures.¹⁶ In the present case, the irreparable nature of the harm that could occur relates to the rights to life and to physical integrity of the beneficiaries’ next of kin.

17. The *prima facie* standard of assessment and the application of presumptions in the face of the need for protection have led the President and the Court to order provisional measures on different occasions.¹⁷

18. Based on the foregoing, the Court finds that the threatening phone call allegedly received by the beneficiary José Ángel Alvarado Favela and his family’s difficult subsequent decision to leave their homes and jobs and to remain in a secret location reveal *prima facie* a situation of extreme gravity and urgency that justifies the expansion of protective measures in order to avoid irreparable harm to the other members of the family who are in the said situation. Consequently, the Court ratifies the President’s decision and thus considers that the State must adopt the necessary measures to protect the life and physical integrity of the nine next of kin of the beneficiaries mentioned in the Commission’s request (*supra* seventh considering paragraph).

II. Regarding the request to expand the provisional measures to include the representatives of the beneficiaries

19. The Court takes note of the Commission’s arguments in favor of expanding the present measures to include the representatives of the beneficiaries, according to which: (i) the threats against the beneficiaries of the present measures also extend to their representatives owing to the relationship between the threats and the denunciation and

¹⁵ Cf. *Matter of the Capital Detention Center El Rodeo I and El Rodeo II*, *supra* note 8, eighteenth considering paragraph; *Matter of Alvarado Reyes et al.*, *supra* note 7, forty-seventh considering paragraph, and *Matter of Mery Naranjo et al.*, *supra* note 3, eleventh considering paragraph.

¹⁶ Cf. *Matter of the Capital Detention Center El Rodeo I and El Rodeo II* *supra* note 8, seventeenth considering paragraph; *Matter of Alvarado Reyes et al.*, *supra* note 7, forty-seventh considering paragraph, and *Matter of Mery Naranjo et al.*, *supra* note 3, eleventh considering paragraph.

¹⁷ Cf. *inter alia*, *Matter of the Monagas Judicial Detention Center (“La Pica”)*. Provisional measures with regard to Venezuela. Order of the President of the Inter-American Court of January 13, 2006, sixteenth considering paragraph; *Matter of the Socio-educational Detention Unit*, *supra* note 8, fifth considering paragraph, and *Matter of Mery Naranjo et al.*, *supra* note 3, thirteenth considering paragraph.

investigation of the alleged disappearance of the beneficiaries Nitza Paola, Rocío Irene, and José Ángel Alvarado, in which the representatives have played a visible and active role, and (ii) the alleged context of harassment of human rights defenders in Chihuahua would suggest a situation of risk to the life and physical integrity of the said representatives (*supra* having seen paragraph 8). The Court also notes the State's observation in this regard that the Commission has not referred to specific acts against the representatives that might reveal a situation of extreme gravity and urgency.

20. Regarding the said climate of harassment against human rights defenders, the Court deems it opportune to reiterate the content of its Order of November 26, 2010.¹⁸ On that occasion, the Court explained that even though, in order to determine the existence of a situation of extreme gravity and urgency to avoid irreparable harm, it may assess all the political, historical, cultural or other factors or circumstances affecting the beneficiary or placing him in a vulnerable position at a specific time and exposing him to possible violations of his rights, only situations that are specifically extreme and urgent may be addressed by way of provisional measures. In this regard, the Court indicated that there may be a series of factors or circumstances that reveal serious harassment against a particular group that places the group in a situation of extreme gravity and urgency and in danger of suffering irreparable harm. In this extreme situation, the granting of provisional measures may be justified even without a direct threat to the beneficiary, if a series of serious attacks against a group to which he belongs gives rise to the reasonable inference that he will also be attacked. However, the Court indicated that there may also be a situation that is not of this nature and that, in itself, does not represent extreme gravity and urgency and the danger of suffering irreparable harm for a specific group. In this case, the context will only be used to evaluate the specific threat against the beneficiary and not, of itself, to justify the granting or maintenance of provisional measures.¹⁹

21. With respect to the request to expand the provisional measures to include the representatives, the Court observes that, on this occasion, the Commission again requested that provisional measures be granted in favor of five representatives whose previous request for provisional measures had been rejected by this Court in its Order of November 26, 2010.²⁰ In that Order, the Court found that the alleged context did not *per se* justify the granting of provisional measures in favor of the said representatives; in other words, that the said context was insufficient to support the expansion of the provisional measures in the absence of specific facts leading to consistent conclusions concerning the said effects of that context in the specific matter.²¹ To the contrary, on the same occasion, the Court found that there had been specific acts of intimidation and threat against the representative Emilia

¹⁸ Cf. *Matter of Alvarado Reyes et al.*, *supra* note 7, sixtieth to sixty-second considering paragraphs.

¹⁹ Cf. *Matter of Carlos Nieto et al.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of January 26, 2009, nineteenth considering paragraph; *Matter of Liliana Ortega et al.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of July 9, 2009, twenty-fourth considering paragraph, and *Matter of Alvarado Reyes et al.*, *supra* note 7, sixty-second considering paragraph.

²⁰ On that occasion, the Court rejected the request to expand the provisional measures to include Patricia Galarza Gándara, Brenda Andazola, Luz Esthela Castro Rodríguez, Oscar Enríquez, Javier Ávila Aguirre, and Francisca Galván. Cf. *Matter of Alvarado Reyes et al.*, *supra* note 7, fourth operative paragraph.

²¹ Cf. *Matter of Alvarado Reyes et al.*, *supra* note 7, sixty-third and sixty-fourth considering paragraphs.

González Tercero that, added to the said context, could constitute *prima facie* a situation of extreme gravity and urgency, for which it was necessary to prevent irreparable damage to her rights and, on this basis, ordered the adoption of provisional measures in her favor.²²

22. On the present occasion, the Court reiterates its previous findings in the sense that, from the information provided, it is not possible to conclude that the alleged climate of harassment against human rights defenders constitutes *per se* a basis for granting provisional measures in favor of the representatives. The Court observes that the information presented does not reveal that any specific acts have occurred against the proposed beneficiaries, representatives of the beneficiaries, that could constitute the effects of this alleged context.

23. Consequently, the Court agrees with its President in observing that *prima facie* a situation of extreme gravity and urgency that could give rise to irreparable harm to the rights of the representatives in this matter does not exist. Consequently, the Court ratifies the President's decision and does not find the request to expand the provisional measures to the representatives admissible at this time.

24. Notwithstanding the above, the Court considers it appropriate to reiterate that Article 1(1) of the Convention establishes the general obligations of States Parties to respect the rights and freedoms enshrined therein and to ensure their free and full exercise to all people subject to their jurisdiction. These obligations apply not only in relation to the powers of the State, but also to the acts of third parties.²³

25. The Court also reiterates that the State has the particular obligation to protect those persons who work 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 own efforts as guarantor of the rights of all persons under its jurisdiction.²⁴

III. Regarding the request for a hearing in this matter

26. The Court observes that, on four occasions,²⁵ the representatives have requested a public hearing in this matter, because they consider that the State has not taken specific and effective measures to find the beneficiaries who are allegedly disappeared since December 29, 2009; that the State has taken "no action" to protect the next of kin who are beneficiaries as required in the Court's Order of November 26, 2010, and that the State's response is not commensurate with the gravity and urgency of the situation in this matter.

²² Cf. *Matter of Alvarado Reyes et al.*, *supra* note 7, sixty-fifth and sixty-sixth considering paragraphs.

²³ Cf. *Case of Velásquez Rodríguez*. Provisional measures with regard to Honduras. Order of the Inter-American Court of January 15, 1988, third considering paragraph; *Case of Caballero Delgado and Santana*, *supra* note 3, twenty-fifth considering paragraph, and *Matter of María Lourdes Afiuni*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of March 2, 2011, twelfth considering paragraph.

²⁴ Cf. *Case of the Monagas Judicial Detention Center ("La Pica")*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of February 9, 2006, fourteenth considering paragraph; *Matter of the Colombian Jurists Commission*. Provisional measures with regard to Colombia. Order of the Inter-American Court of November 25, 2010, twenty-fourth considering paragraph, and *Matter of Alvarado Reyes et al.*, *supra* note 7, sixty-eighth considering paragraph.

²⁵ The representatives requested that a hearing be convened in briefs of November 22, 2010, and January 25, March 30 and May 6, 2011.

27. The Court notes that in its Order of November 26, 2010, it asked the State to submit a complete report on the first, second, and third operative paragraphs of that Order, and also to submit the specific information requested in the twentieth and twenty-fourth considering paragraphs of the said Order, by January 31, 2011, at the latest. In this regard, the Court observes that the State submitted this report on February 21, 2011, but did not provide detailed and comprehensive information on the measures it had taken to protect the life and integrity of all the beneficiaries, or on any measures that it had adopted since it submitted its previous report to discover the whereabouts of the beneficiaries who had allegedly disappeared, as required by the Court in the sixth operative paragraph of the said Order of November 26, 2010. Consequently, in a note of the Secretariat dated March 2, 2011 (*supra* having seen paragraph 5), the President of the Court asked the State to present the missing information in its next bi-monthly report on the implementation of these measures. On April 5, 2011, Mexico presented this report (*supra* having seen paragraph 13). In it, the State, *inter alia*, repeated the content of its brief with observations on the request to expand the provisional measures (*supra* having seen paragraph 10) with regard to the alleged lack of willingness of the representatives and beneficiaries to agree on the measures of protection to be adopted in favor of the beneficiaries, and indicated that this was the reason why it had been unable “to continue with the implementation of the measures.” The Court considers that the information contained in the State’s report is insufficient and does not allow the Court to evaluate the status of implementation of the present measures with regard to all the beneficiaries.

28. Based on the above, and given the request for a hearing presented by the representatives, as well as the absence of any objection by the State, the Court ratifies the decision of the President and deems it appropriate to convene a public hearing during its ninety-first regular session to be held from June 27 to July 9, 2011, in order to receive specific updated information from the State, as well as the observations of the representatives and the Inter-American Commission on the status of implementation of these provisional measures.

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 ratify all aspects of the Order of the President of the Inter-American Court of Human Rights of April 1, 2011, and therefore to require the State to maintain any measures currently in place and to adopt, immediately and definitively, any complementary measures that may be necessary and effective to protect the rights to life and physical integrity of the following persons: J.O.A.R., R.G.A.R., S.A.R. and J.E.A.R., children of the beneficiary Jaime Alvarado Herrera; Sandra Luz Rueda Quezada, wife of the beneficiary Jaime Alvarado Herrera; J.G.A., daughter of the beneficiary Rosa Olivia Alvarado Herrera; D.J.A. and J.A., daughters of the beneficiary Manuel Melquíades Alvarado Herrera, and Mayra Daniela Salais Rodríguez, wife of the beneficiary Manuel Melquíades Alvarado Herrera.

2. To reiterate to the State that it must adopt immediately all necessary measures to ascertain promptly 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 life, physical integrity and personal liberty.
3. To reiterate to the State that it must adopt immediately all necessary measures to protect the life and physical integrity of Patricia Reyes Rueda; A.A.R. and A.A.R., sons of the beneficiary Patricia Reyes Rueda; M.U.A., daughter of the beneficiary Rocío Irene Alvarado Reyes; Manuel Reyes; Obdulia Espinoza Beltrán; J.A.E., J.A.A.E., and A.A.E., sons of the beneficiary José Ángel Alvarado Herrera and Obdulia Espinoza Beltrán; José Ángel Alvarado Favela; Concepción Herrera Hernández; Jaime Alvarado Herrera; Manuel Melquíades Alvarado Herrera; Rosa Olivia Alvarado Herrera; K.P.A.A. and F.A.H., sons of the beneficiary Rosa Olivia Alvarado Herrera; Feliz García; M.P.A.E., N.C.A.E., and D.A.E., daughters of the beneficiary Nitza Paola Alvarado Espinoza; María de Jesús Alvarado Espinoza; Rigoberto Ambriz Marrufo; María de Jesús Espinoza Peinado and Ascensión Alvarado Favela.
4. To reiterate to the State that it must adopt immediately all necessary measures to protect the rights to life and physical integrity of Emilia González Tercero.
5. To reject the request to expand the provisional measures to include Patricia Galarza Gándara, Luz Esthela Castro Rodríguez, Oscar Enríquez, Javier Ávila, Francisca Galván, and Gabino Gómez, in accordance with the provisions of the twentieth to twenty-third considering paragraphs of this Order.
6. To require the State to take all pertinent steps to ensure that the measures of protection called for in this Order are planned and carried out with the participation of the beneficiaries or their representatives, so that the said measures are provided diligently and effectively and, in general, to keep them informed of any progress in the implementation of the measures.
7. To ratify the call made by the President of the Court in his Order of April 1, 2011, to Mexico, the representatives of the beneficiaries, and the Inter-American Commission on Human Rights to a public hearing to be held on June 28, 2011, from 9 a.m. to 10.45 a.m., during the Court's ninety-first regular session that will take place at its seat in San José, Costa Rica, for the purpose of gathering specific updated information from the State, and also the observations of the representatives and the Inter-American Commission on the status of implementation of the present provisional measures.
8. To ratify the President's request that the State inform the Inter-American Court of Human Rights about the measures adopted to comply with the provisions of the first operative paragraph of this Order, and to extend *ex officio* the time limit until June 6, 2011.
9. To ratify the President's request that the representatives of the beneficiaries and the Inter-American Commission on Human Rights present any observations they deem pertinent on the State's report mentioned in the preceding operative paragraph within four and six weeks, respectively, of receiving the corresponding State report.

10. To require the State to present its next bi-monthly report on implementation of the present measures on June 6, 2011, together with the report requested in the eighth operative paragraph of this Order. Following the presentation of the said report, the State must continue reporting to the Inter-American Court of Human Rights on the measures adopted in favor of all the beneficiaries of the provisional measures ordered in this matter every two months, and the representatives of the beneficiaries and the Inter-American Commission on Human Rights must present their observations within four and six weeks, respectively, from notification of the said State reports.

11. To require the Secretariat of the Court to notify the present Order on the State of Mexico, 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