

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MARCH 1, 2012**

**PROVISIONAL MEASURES
REGARDING THE UNITED MEXICAN STATES**

MATTER OF MARTÍNEZ MARTÍNEZ *ET AL.*

HAVING SEEN:

1. The brief of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") of November 23, 2011 and its attachments, in which it submitted a request for provisional measures to the Inter-American Court of Human Rights (hereinafter the Inter-American Court," or 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 Court's Rules of Procedure (hereinafter "the Rules of Procedure"), for the purpose of requiring the United Mexican States (hereinafter "Mexico" or "the State") to adopt measures aimed at "protect[ing] the life and personal integrity of Margarita Martínez Martínez, Adolfo Guzmán Ordaz, and the children Ada Saraí Martínez Martínez and Eduardo Abel León Martínez."

2. The background information presented by the Commission regarding the request for provisional measures, namely:

a) according to the Fray Bartolomé de las Casas Center for Human Rights (hereinafter the "Center Fray Bartolomé de las Casas" or "representatives") of the state of Chiapas Mexico, Mrs. Margarita Martínez Martínez (hereinafter "Mrs. Martínez Martínez") is a "human rights defender of indigenous peoples, the daughter of Guatemalan refugees from the conflict that took place in that country." Her partner, Mr. Adolfo Guzmán Ordaz (hereinafter "Mr. Guzman Ordaz") is "a native of the Zapotec peoples and is dedicated to defending the rights of indigenous peoples, mainly in the states of Oaxaca and Chiapas[.] [I]n addition, he promotes a regional peasant flea market in Comitán." Both are "human rights defenders and members of the organization ENLACE, Communication and Training" (hereinafter "ENLACE");

b) ENLACE is an autonomous civil and secular organization, founded in 1982, "responsible for promoting local sustainable development processes in indigenous and rural areas of the country's central and southern regions;"

c) on November 8, 2009, between 18 to 20 people, allegedly members of the Ministerial Police, using force and threats, carried out a search at the home of Mrs. Margarita Martínez Martínez and Mr. Adolfo Guzmán Ordaz, which allegedly took place without a search warrant. The search of the home was carried out in the presence of the four family members, and the children's rooms were also searched. It was reported that during the search, the family members were threatened with a firearm;

- d) on November 23, 2009, a complaint was filed before the authorities, denouncing abuse of authority, raiding of premises, psychological torture and serious death threats. In addition, the victims sought the protection of the authorities, without receiving a response;
- e) on November 25, 2009, the victims received a paper note from a neighbor with a message "invit[ing] [them] to be careful because the night before [five] individuals had been watching the house";
- f) on December 14, 2009, they received another note stating "do not continue, you will die";
- g) on December 25, 2009, they received a telephone call at dawn in which they were told, "merry Christmas, because it will be your last Christmas";
- h) on January 6, 2010, they received an anonymous note that said "death, death, death";
- i) on January 19, 2010, they received another note warning "you have one week to leave the country, if you don't do it your children dead [sic]";
- j) according to the information provided, Margarita Martínez Martínez and Adolfo Guzmán Ordaz's family were forced to move to another city due to security concerns, and
- k) on February 25, 2010, when Mrs. Margarita Martínez Martínez was on her way to pick up her youngest child from school, according to the Commission, she was kidnapped, tortured, raped, and threatened with death by strangers, who warned her to drop the complaint filed regarding the events that took place on November 8, 2009. Moreover, according to the information provided by the Commission, the kidnappers stated that the assault was a "little gift from the [M]unicipal [Pr]esident of [the locality of] Comitán." This event took place two days before the date set for the presentation of expert evidence to reconstruct the events relating to the complaint filed on November 23, 2009.

3. The request for precautionary measures and the petition before the Inter-American Commission:

- a) on February 25, 2010, the Center Fray Bartolomé de las Casas of the state of Chiapas, Mexico, filed a request for precautionary measures in favor of Margarita Martínez Martínez, her partner Adolfo Guzmán Ordaz and her two children, Ada Sarai Martínez Martínez and Eduardo Abel León Martínez (hereinafter "the petitioners" or "possible beneficiaries"). In addition, they requested protection for members of the organization ENLACE and of the Fray Bartolomé de las Casas Center for Human Rights;
- b) on March 3, 2010, the Commission ordered precautionary measures in favor of Margarita Martínez Martínez, Adolfo Guzmán Ordaz, Ada Sarai Martínez Martínez and Eduardo Abel León Martínez. The Commission requested that the State adopt the necessary measures to guarantee their lives and personal integrity, that the implementation of such measures be agreed with the petitioners, and that it provide information concerning the investigations of the events that gave rise to the

measures. Finally, it requested information to assess the request regarding the members of the organization ENLACE and the Center Fray Bartolomé de las Casas.

4. Events that are alleged to have occurred after the granting of precautionary measures, namely:

a) on November 24, 2010, Margarita Martínez Martínez was intimidated by two strangers who approached her and asked her to accompany them. Then they handed her a note that said, "Diego [referring to the Director of the Center Fray Bartolomé de las Casas] in your hands is the life of this family / you will face charges [...]." As was reported, these persons accompanied Mrs. Martínez Martínez for another a couple of blocks, told her to take a taxi and to ask to be taken to the cemetery so that she could "speak to [the] dead, because she [would be seeing] them soon." The bodyguard assigned to Mrs. Margarita Martínez Martínez in the context of the precautionary measures was not with her;

b) on December 13, 2010, the representatives called on the Commission to submit a request for provisional measures on behalf of the petitioners and their representatives, members of the Center Fray Bartolomé de las Casas, in relation to the events that occurred on November 24, 2010. They also provided information on a series of threats, stalking, and harassment against members of the Center Fray Bartolomé de las Casas;

c) on December 15, 2010, the Commission decided to extend the precautionary measures in favor of all the members of the Center Fray Bartolomé de las Casas and requested that the State strengthen the measures in favor of Margarita Martínez Martínez and her family;

d) according to information submitted by the Commission, the State responded by indicating that Mrs. Margarita Martínez Martínez and members of the Centro Fray Bartolomé de las Casas had not made a statement about the alleged events that occurred on November 24, 2010, and the other threats. Consequently, the State indicated that in order to complete the investigation into the allegations, it had proposed a number of measures aimed at allowing Mrs. Martínez Martínez to render a statement. Regarding the protection arrangements, it pointed out that eight police officers had been reassigned to her, that the necessary steps had been taken to provide the three vehicles requested by the petitioners and that video cameras had been installed on the premises of Fray Bartolomé de las Casas and at the home of Mrs. Martínez Martínez. The State added that it would be providing an amount of pesos per month to the petitioner for the incidents that took place in November 2009, among others;

e) in February and March 2011, the petitioners reported that strangers had apparently been following the Martínez family;

f) in March 2011, the petitioners presented a second request to the Commission calling for the matter to be submitted to the jurisdiction of the Court, due to fears of future threats, the delay in the investigation of the events of November 2010, and a note from the Federal Police on March 10, 2011, informing that "at the moment, they were materially unable to [provide] accompaniment by bodyguards";

g) on August 19, 2011, strangers were seen aboard a truck outside the school where Ada Sarai Martínez Martínez studies. Days later, the authorities at her school reported that the school premises were being patrolled by unidentified persons,

something that had put the parents on alert, as the strangers had been taking photos of the students;

h) on September 29, 2011, a truck passed in front of the petitioners' home, with the former President of Comitán and his bodyguards, who were allegedly involved in the events of November 8, 2009;

i) on October 3, 2011, strange vehicles were seen apparently following the petitioners and prowling around their home;

j) on October 17, 2011, one of Margarita Martínez Martínez's bodyguards resigned, a fact that was reported to the competent authorities and, at the time of submitting the request for the provisional measures, the guard has not been replaced. According to the petitioner, she was to be assigned at least eight bodyguards, four on the day shift and four on the night shift. Given that the number of guards is insufficient to protect all the family members and that the petitioners are sometimes left unprotected, they felt that they were at risk and vulnerable. They also mentioned certain failings with regard to the transport and that the video cameras were not functioning;

k) on October 20, 2011 Margarita Martínez Martínez received a threat at her home warning her that "[j]ust so you know there is no justice, better to [s]hut your mouth if you don't want to disappear, we are the law and we are protected, death, death, death"; and

l) on October 21, 2011, the representatives filed a third petition for the Commission to request provisional measures in favor of Margarita Martínez Martínez, Adolfo Guzmán Ordaz and their two children, Ada Sarai Martínez Martínez and Eduardo Abel Leon Martínez, in relation to the events that occurred on October 17 and 20, 2011. The petitioners indicated that the State had been incapable of preventing and investigating the incidents and punishing those responsible. They added that the State had been unable to conduct a serious investigation regarding the violent events of November 8, 2009, and February 25, 2010, and that therefore "the risk still remains."

5. The Commission's arguments to support its request for provisional measures are:

a) the extreme gravity of the actions, threats, stalking, and harassment to which Margarita Martínez Martínez, Adolfo Guzmán Ordaz and their family have been subjected, presumably in retaliation for Mrs. Martínez Martínez' activities as a human rights defender and for denouncing her own situation. The warning of further violence given the threat received on October 20, 2011, "the continuity of the alleged stalking, the lack of investigation of the facts that gave rise to the precautionary measures and a number of failings in the protective measures provided by the State, suggests that the situation of the [petitioners] is at a much higher level of gravity." It added that the information provided by the petitioners indicates that the perpetrators of these acts are aware of their circumstances and activities;

b) that Mrs. Margarita Martínez Martínez's children are in a situation of grave risk which requires special measures of protection in response to their situation of vulnerability. The Commission found clear evidence that the stalking includes the activities of the two children and that the threats also extend to them. Therefore, the

situation is one of extreme gravity and requires the State's immediate and effective response;

c) regarding the standard of extreme urgency, the Commission noted that "the alleged failure to ensure adequate measures of protection and the alleged lack of progress in the investigation of the threats and violence against Margarita Martínez-Martínez –allegedly committed or tolerated by State agents– are elements that support this requirement;"

d) that the Court should take into consideration the lack of concrete effects of the precautionary measures as a factor to presume that a person's situation is grave;

e) that it considers it important to highlight the essential role played by human rights defenders in society and the crucial need to protect their "life, personal integrity, personal liberty, and freedom of expression." It also stated that "the special impact of the attacks against human rights defenders lies in its harmful effect, which goes beyond the direct victims," and

f) that given the Court's constant practice of using the *prima facie* assessment standard and the application of presumptions to the immediate requirements for protection, the Court has sufficient information to admit the request for provisional measures.

6. The communication of November 25, 2011, in which the Secretariat of the Court (hereinafter "the Secretariat") sent a copy of the request for provisional measures to the State. Also, following the instructions of the plenary of the Court, it requested that the State submit, no later than December 5, 2011, any observations it deemed relevant regarding the request, as well as any other information or documentation deemed appropriate, in order for the Court to consider the Commission's request with all the necessary information.

7. The brief of December 6, 2011, in which the State referred "to the request for information concerning the situation of Mrs. Margarita [...] Martínez Martínez, her husband Adolfo Guzmán Ordaz, and their children [...], in order to assess the admissibility of a request for provisional measures in her favor." In this regard, the State submitted its observations on the various facts noted by the Commission in its request for provisional measures. These are:

Events that took place prior to the adoption of precautionary measures

a) regarding the alleged events of November 8, 2009, the State indicated that on November 23, 2009, Mr. Adolfo Guzmán Ordaz and Mrs. Margarita Guadalupe Martínez Martínez filed a formal written complaint before "the Special Prosecutor for Protection and Assistance of Nongovernmental Organizations for the Defense of Human Rights (hereinafter "FEPAONGDDH" for its Spanish acronym), for the crimes of Torture, Raiding Premises, Abuse of Authority and any crimes that might be committed to their detriment, and against the person or persons responsible." The State specified that "at this time, FEPAONGDHH offered to implement precautionary measures to ensure the physical integrity of Mr. Adolfo Guzmán Ordaz and his family, to prevent a situation that is difficult or impossible to remedy, which were not accepted by the offended party."

b) Furthermore, the State noted that, on November 7, 2009, FEPAONGDDH reported that the Prosecutor of the Public Prosecutions Office attached to the First Court of Criminal Matters requested that the Judge on Criminal Matters Specialized in Precautionary Measures issue “a search warrant to be executed in various homes in the town of Comitán de Domínguez, Chiapas, including one located at *5^a Avenida oriente Sur 199 ciento noventa y nueve, entre 15 quince y 16 dieciséis calle oriente*[, the home of Margarita Martínez Martínez], in order to execute the arrest warrant against Víctor de Jesús Pinto Hernández.” Therefore, “it is evident that the public officials arrived at the home of Mr. and Mrs. Adolfo Guzmán Ordaz and Margarita [...] Martínez Martínez, with an authorized search warrant.”

c) As a result of the complaint filed by those affected, a “Preliminary Investigation number 0004/FEPONGDDH-M1/2009 was opened,” which has initiated several inquiries to determine those responsible for the events that took place. Stemming from said investigation carried out on November 22, 2010, “a criminal complaint was filed before the Second Court of Criminal matters of the Judicial District of Tuxtla Gutiérrez, Chiapas.” However, the competent judicial body “denied the request to issue an arrest warrant,” for which reason “the Prosecutor of the Public Prosecutions Office attached to the court filed an appeal, sending the evidence to the Superior Court of Justice of the State.” Consequently, on February 14, 2011, the Superior Court of the State “by a majority vote, decided to declare the lack of jurisdiction of the Judge of the Second Court on Criminal Matters of the Judicial District of Tuxtla Gutiérrez, Chiapas.” On February 23, 2011, it ordered the arrest of several individuals as “possible perpetrators of the crime of abuse of authority [,] and also for carrying out of an unlawful raid,” and a claim was filed against nine possible perpetrators. On March 10, 2011, the Judge hearing the matter issued a formal order of imprisonment against one of the individuals.

d) regarding the alleged events of November 25, 2009, (*supra* Having Seen para. 2(e)), the State argued that it did not learn about the incident until December 7, 2009, when Mr. Adolfo Guzmán Ordaz filed a brief denouncing the matter. As a result, the Prosecutions Office drafted “an official letter number FEPONGDDH/MP/121/2009,” in which it again asked the petitioners to consider the “proposal for precautionary measures.” This proposal was declined by Mr. Guzmán Ordaz in a brief dated December 8, 2009;

e) regarding the alleged events of December 14, 2009 (*supra* Having Seen para. 2(f)), the State noted that, by way of official letter number FEPONGDDH/133/2009 dated December 18, 2009, FEPONGDDH “requested that the [first] superintendent Mr. Moisés Grajales Monterrosa, guarantee [the petitioners] the precautionary and security measures necessary to protect their lives, in prior consultation with them”;

f) regarding the events of December 25, 2009, (*supra* Having Seen para. 2(g)), the State reported that FEAPONGDHH drafted the official letters “FEPONGDDHM/P/139/2009 and FEPONGDDH/MP/142/2009, dated December 25 and 26, 2009, respectively, to the first Superintendent Mr. Moisés Grajales Monterrosa, requesting the adoption of the necessary precautionary measures.”

g) regarding the events of January 6, (*supra* Having Seen para. 2(h)) and January 19, 2010 (*supra* Having Seen para. 2(i)), the State noted that the FEPOANGDHH did not learn of these until January 13 and February 9, 2010, respectively. It reported that FEPAONGDDH “requested experts on dactyloscopy to

carry out the necessary evidentiary procedures to seek and obtain fingerprints in the anonymous document." In no case were fingerprints found as a result of this expert assessment; and

h) regarding the events of February 25, 2010 (*supra* Having Seen para. 2(k)), the State learned of these on March 1, 2010, and on this same date, FEPOANGDHH requested "the adoption, without delay, of precautionary measures" in favor of the petitioners.

Events that took place after the adoption of the precautionary measures

i) regarding the events of November 24, 2010 (*supra* Having Seen para. 4(a)), FEPOANGDHH opened *ex officio* an administrative record No. AA 005/FEPONGDH-M1/2010. On November 25, 2010, FEPAONGDDH drafted official letter No. FEPONGDDH-M2/148/2010 to the Commissioner, at the Secretariat for Citizen Security and Protection, requesting that the precautionary measures be tightened. That same day, the aforementioned administrative record was given the rank of preliminary investigation, under file No. AP0004/FEPONGDDH-M1/2010, in respect of which more than 79 procedures were carried out. Finally, it noted that, at the time when the observations were presented, Mrs. Martínez Martínez and members of the Center Fray Bartolomé de las Casas had not appeared to render their ministerial statements regarding the matter, despite having received legal notice;

j) regarding the alleged events of February and March 2011, and August 19, September 29, and October 3, 2011 (*supra* Having Seen paras. 4(e), 4(g), and 4(h)), according to the "incident book" no incident [occurred] that would have jeopardized the integrity of the beneficiaries of the measures;"

k) regarding the alleged events of October 20, 2011 (*supra* Having Seen para. 4(k)), on that date FEPAONGDDH became aware of the facts and initiated the Administrative Record AA 0010/FEPONGDDH-M1/2011, in which it ordered various procedures to investigate the matter of the note sent to the petitioners, for which the alleged victims were interviewed, but refused to cooperate with the investigations required in order to open a preliminary investigation. In this respect, it noted that the investigations have begun, but that Mrs. Martínez' assistance is required to obtain more evidentiary elements that may help clarify the facts under investigation. In that regard, she has been asked to appear before this social organization, but has ignored this request and has shown a lack of legal interest, and therefore the matter would be characterized under the hypothesis of Article 37 *bis* of the Code of Criminal Procedure of the state of Chiapas, and

l) that in response to the specific question asked of the petitioners regarding "whether they had received threats after October 20 of this year, [their] answer was no."

8. Furthermore, in its brief the State referred to the implementation of the protection measures granted to Mrs. Martínez Martínez and her family, prior to the Commission's request for provisional measures for these persons. FEPAONGDDH ordered several measures for the protection of the petitioners, and among them, "it decided to grant [the petitioners], for humanitarian assistance [,] the monthly sum of \$20,000 [(twenty thousand Mexican pesos)]. Similarly, \$63,000.00 [(sixty-three thousand Mexican pesos)] was granted "as reparation for damage." Another measure granted "consisted of providing ten security packages with digital cameras with night vision, including their installation and

configuration, for the sum of \$115,746.00 [(one hundred and fifteen thousand, seven hundred and forty-six Mexican pesos)], which were installed in the [...] home of the petitioners. In addition, [the petitioners] were granted the precautionary measure of accompaniment by bodyguards. According to the State “eight officers of the Secretariat for Citizen Security and Protection of the [s]tate of Chiapas [...] were in charge of security.” In response to the Commission’s observation that on October 17, 2011, a member of the guard had resigned and that to date had not been replaced, the State pointed out that on November 15, 2011, a substitute was appointed. Finally, the State reported that, as agreed at the meeting of March 5, 2010, another precautionary measure was granted for “the installation of a closed circuit monitoring system at the home of the [petitioners].”

9. Likewise, the State reported that with “the prior agreement of the petitioners and their representatives, on December 1, [2011], a follow-up meeting was held regarding the implementation of the [...] precautionary measures” granted by the Commission and, in an effort to make these more effective and guarantee [the] security and protection,” it was agreed that the necessary investigations would be carried out to ascertain what had occurred, relying on Mrs. Martínez Martínez’s cooperation as essential assistance. Among other the issues discussed were the following: a) “a proposal for an inter-institutional mechanism that would increase the beneficiaries’ level of confidence so that they would cooperate” in the investigations; b) the State “offered the beneficiaries the services provided by the Special Prosecutor for Assistance to Victims of Crime (hereinafter “PROVICTIMA”), which provides legal assistance and psychological counseling, with an emphasis on protection for minors [...].” This offer was not accepted by the petitioners; however, in consideration of PROVICTIMA’s work, they said that although at present they are not interested, it is an offer that they might consider later on,” and c) the State and the representatives agreed that at the next meeting “consensus [...] would be reached on a preliminary protocol for implementing the measure requiring bodyguards, which will be prepared by the Secretariat for Citizen Security and Protection of Chiapas.”

10. In addition, according to information submitted by the State, the “beneficiaries” were provided with two emergency numbers of the Federal Police in San Cristóbal de las Casas, Chiapas. Moreover, the “beneficiaries” told “the authorities that the closed circuit monitoring system installed in their home by FEAPONGDDH is disconnected because it is broken, given that the hard drive does not record and the resolution is poor,” and they requested another closed circuit camera. In this regard, the State pointed out that the “director of FEAPONGDDH requested the beneficiaries’ cooperation in authorizing access for a [t]echnician to inspect the monitoring system and, if necessary, provide permanent maintenance, but the beneficiaries said that they would uninstall the equipment and hand it over to the Prosecutor for inspection.” As to a new camera for the monitoring system, the State noted that “since the beneficiary Adolfo Guzmán no longer works with the organization ENLACE, where a camera was installed, this [camera] can be installed at the home of the beneficiary [indicating] that he will inform the organization of this matter, so that an assessment can be made.” Finally, the representatives noted that “there is no street lighting around the home of the beneficiary, and requested reflectors for the property.” In this regard, the State indicated that “the Secretariat of the Government of Chiapas will make the necessary arrangements with the City Council of San Cristóbal de Las Casas to restore the street lighting.

11. The State asserted that the Commission’s argument that “the Government of the [s]tate of Chiapas has not been willing to investigate its officials” lacks substance, given that several investigations regarding the events have been carried out, in which its own officials are implicated as possible perpetrators. The State concluded that “it does not share the C[ommission’s] view that the beneficiaries of the precautionary measures face a higher

level of danger, due to the alleged threats, since they are protected by security guards.” Therefore, it argued that the “precautionary measures that are in place, have prevented irreparable harm from occurring to the beneficiaries and therefore their implementation has been timely and effective. Thus, the State of Mexico considers that monitoring of this matter should continue in the context of the measures of the [Commission], but not before the Inter-American Court.”

12. The communication of December 14, 2011, in which the Secretariat, following instructions of the President, requested that the Inter-American Commission submit, no later than January 9, 2012, any observations it deems pertinent regarding the information presented by the State and, specifically, that it comment on the meeting held on December 1, 2011, which the State claims was carried out “in agreement with the beneficiaries and their representatives,” in which certain actions were agreed upon in order to ensure the safety and protection of Mrs. Martínez Martínez and her family.

13. The brief of January 19, 2012, in which the Commission presented its observations to the State’s report, noting that the investigations into the various threats received by the victims remain the same as they were before the request for provisional measures was submitted, and reported to the Inter-American Court, and that no new evidence has been provided for analysis. In this regard, it noted that it is not clear whether the State has made progress in investigating the events that gave rise to the precautionary measures; on the contrary, the existing information shows that the investigations are still in the preliminary stages, given that nobody has been arrested and a formal order of imprisonment has only been issued for one person.

14. On the other hand, with regard to the State’s assertion that it has not received any reports of threats and harassment against the petitioners since October 2011, the Commission considered that this affirmation lacks a comprehensive analysis of the situation facing the potential beneficiaries. In this respect, it noted that Margarita Martínez Martínez and Adolfo Guzmán Ordaz and their family have been the subject of threats and harassment, since November 2009 and at least until October 2011, with these occurring months apart. Their representatives have found that these incidents are directly related to the public appearances made by Mrs. Martínez Martínez and Mr. Guzmán Ordaz. Accordingly, the Commission reiterated that during the time the precautionary measures have been in effect, and despite these measures, the beneficiaries have continued to be threatened, stalked, and harassed, regardless of the security provided by State agents. It added that the State has not responded to the request for security measures for the potential beneficiaries of the provisional measures to be provided by Federal Police, since Mrs. Martínez Martínez and Mr. Adolfo Guzmán have identified the local authorities as the source of the risk. The State made no reference to the special measures of protection that would be necessary for the children Ada Saraí Martínez Martínez and Eduardo Abel León Martínez.

CONSIDERING THAT:

1. Mexico has been a State Party to the American Convention on Human Rights since March 24, 1981 and, in accordance with Article 62 thereof, accepted the compulsory jurisdiction of the Court on December 16, 1998.

2. Article 63.2 of the American Convention establishes that, “[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons,” the Court shall adopt such provisional measures as it deems pertinent, in matters it has under

consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.”

3. Article 27 of the Rules of Procedure of the Court establishes that:

1. At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, 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, 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

[...]

4. That the Court has pointed out that provisional measures are of a twofold nature: precautionary and protective.¹ The precautionary nature of provisional measures is linked to the framework of international contentious cases. In this regard, the purpose and goal of such measures is to preserve those rights that are potentially at risk until the dispute is settled. Their purpose and goal is to ensure the integrity and effectiveness of the decision on the merits, thereby preventing an infringement of the rights at issue, a situation that might render the final decision ineffective or hinder its effective application. Thus, provisional measures enable the State concerned to comply with the final decision and, if applicable, to proceed with the reparations ordered.² As regards the protective nature of provisional measures, this Court has pointed out that these constitute a true jurisdictional guarantee of a preventive nature, because they protect human rights, inasmuch as they seek to avoid irreparable harm to persons.³

5. The Court recalls that for the purposes of granting the provisional measures requested, both in their protective and precautionary aspects, there must be a concurrence of the three requirements enshrined in Article 63.2 of the Convention, namely: i) “extreme gravity;” ii) “urgency,” and iii) the need to “avoid irreparable harm to persons.” These three conditions must coexist and must be present in any situation in which the Court’s intervention is requested.⁴

¹ Cf. *Case of Herrera Ulloa v. Costa Rica (Newspaper “La Nación”)*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of September 7, 2001, Considering paragraph 4, and *Case of de la Cruz Flores v. Peru*. Order of the Inter-American Court of February 29, 2012, Considering paragraph 5.

² Cf. *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of February 8, 2008, Considering paragraph 7 and *Case of Eloísa Barrios et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of July 5, 2011, Considering paragraph 2.

³ Cf. *Case of Herrera Ulloa v. Costa Rica (Newspaper “La Nación”)*, *supra* note 1, Considering paragraph 4 and *Case of de la Cruz Flores v. Peru*, *supra* note 1, Considering paragraph 5.

⁴ Cf. *Case of Carpio Nicolle et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of July 6, 2009, Considering paragraph 14, and *Case of de la Cruz Flores v. Peru*, *supra* note 1, Considering paragraph 2.

6. With respect to gravity, for the purposes of adopting provisional measures, the Convention requires that this be “extreme,” in other words, at its most intense or highest level. The urgency of a situation implies that the risk or threat involved is imminent, which requires an immediate remedy in response. Finally, regarding the issue of harm, there must be a reasonable probability that it will materialize and it must not affect goods or legal interests that can be repaired.⁵

7. In response to a request for provisional measures, the Court cannot consider the merits of any argument that is not strictly associated with extreme gravity, urgency and the need to avoid irreparable harm to persons. Any other matter may only be brought before the Court in a contentious case.⁶

8. The instant request for provisional measures is not related to a case brought before the Court; instead, it originated from a request for precautionary measures submitted to the Inter-American Commission. The Court does not have information as to whether the facts brought to the Court’s attention are part of a contentious proceeding before the Inter-American system or whether a petition on the merits related to this request has been filed with the Inter-American Commission.⁷

A. Regarding the request for provisional measures

9. The Inter-American Commission stated that on March 3, 2010, it granted precautionary measures MC-52-10 in favor of Margarita Martínez Martínez, Adolfo Guzmán Ordaz (partner), Ada Saraí Martínez (daughter) and Eduardo Abel León (son), due to the events that took place on November 8, 2009, and February 25, 2010. On December 15, 2010, the Commission decided to extend the precautionary measures in favor of members of the Center Fray Bartolomé de Las Casas, who are the representatives of the potential beneficiaries. According to the Commission, the State has not fully implemented these measures, given that the petitioners continue to suffer threats, harassment, and stalking.

10. The Commission’s request for provisional measures is based on: a) that a search was allegedly carried out without a warrant, with the use of force and threats, at the home of

⁵ Cf. *Matters of Monagas Judicial Center (“La Pica”), Yare I & Yare II Capital Region Penitentiary Center (Yare Prison)*, *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)* and *Matter of Capital El Rodeo I & el Rodeo II*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of November 24, 2009, Considering paragraph 3, and *Case of De La Cruz Flores v. Peru supra* note 1, Considering paragraph 3.

⁶ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of August 29, 1998, Considering paragraph 6, and *Matter of the Communities of Jiguamiandó and Curbaradó*, Provisional Measures regarding Colombia, Order of the Inter-American Court of November 25, 2011 Considering paragraph 5.

⁷ On previous occasions, this Court has interpreted that the phrase “a case not yet submitted to the Court” contained in Article 63.2, final paragraph, of the American Convention implies that there must be at least a slight possibility that the matter prompting the request for provisional measures may be submitted to the contentious jurisdiction of the Court. The matter prompting the request for provisional measures may only be submitted to the Court provided the proceeding set forth in Articles 44 and 46 to 48 of the American Convention has been initiated. Cf. *Matter of García Uribe et al.* Request for Provisional Measures regarding Mexico. Order of the Inter-American Court of February 2, 2006, Considering paragraphs 3 and 4, and *Matter of Alvarado Reyes et al.* Provisional Measures regarding the United Mexican States. Order of the Inter-American Court of May 15, 2011, Considering paragraph 10.

Mrs. Martínez Martínez, where she and her family were allegedly threatened with a firearm; b) that a complaint was filed with the authorities regarding these actions, for the crimes of abuse of authority, raiding premises, psychological torture and death threats, c) that subsequently, Mrs. Martínez Martínez had been kidnapped, tortured, raped and threatened with death by strangers and, in addition, that she and her family had suffered further threats, harassment and stalking that placed their lives and personal integrity at risk, even after the precautionary measures were granted; d) that the State has begun an investigation into the events of November 8, 2009, and e) that the State also opened an inquiry to shed light on the facts concerning the alleged threats, harassment, and stalking, and from the information provided thus far, the State has not yet managed to identify and effectively respond to the source of the risk facing the petitioners.

11. In this regard, the Court finds that the analysis of the facts and arguments of the Inter-American Commission related to points a), b) and d) mentioned in the preceding paragraph correspond to the analysis of a potential contentious case in the event that it should occur. The Court has already held that a ruling on the merits is made by way of a judgment within the proceedings of a contentious case submitted before the Court and not through the processing of provisional measures.⁸ Consequently, the Court shall not take into account the aforementioned arguments given that it is unable to consider elements directly related to the merits of this matter as noted previously.

1) Regarding the existence of alleged threats, harassment and stalking

12. In its request for provisional measures the Inter-American Commission noted that Margarita Martínez Martínez and Adolfo Guzmán Ordaz and their children Ada Sarafí Martínez and Eduardo Abel León “have been subjected to constant threats every so often –even months apart—since November 2009 and at least until October 2011,” even after the granting of precautionary measures. In particular, it stated that on November 24, 2010, Mrs. Martínez Martínez was intercepted by two strangers who handed her a note containing a threat addressed to the Director of the Center Fray Bartolomé de Las Casas, warning that the lives of the members of the Martínez family were in the Director’s hands. On this occasion, Mrs. Martínez Martínez was not accompanied by a bodyguard. The Commission also pointed out that during the months of February, March, August, September and October 2011, Mrs. Martínez Martínez and her family were allegedly subjected to stalking and threats. Specifically, on October 20, 2011, Mrs. Martínez Martínez received another death threat at her home (*supra* Having Seen para. 4(k)) despite the fact that she had moved to another city, and three days earlier, on October 17, 2011, one of her bodyguards had resigned. This increased the petitioners’ fear of continuing to denounce the incidents of which they had been victims.

13. In response to the Court’s request of December 14, 2011, on January 16, 2012, the Commission presented its observations to the State’s report, arguing that “the affirmation made by the State of Mexico that since October 2011 it has not received news of any threats or harassment, lacks a comprehensive analysis of the situation experienced by the potential beneficiaries.” Specifically, it noted that the representatives “have found that the threats and harassment are directly related to the public appearances of the [human rights] defenders Martínez [Martínez] and Guzmán [Ordaz]. However, from the information provided by the State, it is not clear that the State has been able to identify and effectively respond to the source of the risk facing the potential beneficiaries, which has resulted,

⁸ Cf. *Matter of James et al.*, *supra* note 6, Considering paragraph 6 and *Matter of the Communities of Jiguamiandó and Curbaradó*, *supra* note 6, Considering paragraph 5.

among other things, in a decrease in the activities carried out by these defenders," without specifying their activities as human rights defenders.

14. For its part, in its observations to the petition filed by the Commission, the State pointed out that it has implemented precautionary measures to protect the life and integrity of Margarita Martínez Martínez, Adolfo Guzmán Ordaz, and the children Ada Sarai Martínez Martínez and Eduardo Abel León Martínez. In this regard, it noted that "it does not share the [Commission's] view that the beneficiaries are experiencing a higher level of gravity, due to the alleged threats, because they are protected by security guards." It added that the State "has carried out actions aimed at reducing the level of gravity and urgency adduced by the Commission, through the investigations it has undertaken, and also through the protection measures granted to the beneficiaries." Finally, it emphasized the fact that when the petitioners were asked "whether they had received threats after October 20 of this year, [their] answer was no."

2) Regarding the implementation of the protection measures

15. In its request, the Commission noted that "although the State has provided security agents, their presence has not been effective, as evidenced by the continuous and recent death threats" and stalking experienced by Mrs. Martínez Martínez and members of her family. In this regard, it referred to the various incidents mentioned previously that took place in 2011 during the time that the precautionary measures were in effect (*supra* Having Seen para. 4). Moreover, it described the protection arrangements provided, noting that the representatives had pointed out a number of failings in the measures granted, in particular, they reported that on October 17, 2011, one of the designated guards had resigned, without having been replaced by another guard (*supra* Having seen para. 4.j). It also emphasized that, despite the fact that the petitioners have argued that the local authorities are the source of the risk, the State has not responded by arranging for protection to be provided by the Federal Police. Finally, it indicated that the State has made no reference to the special measures of protection that would be required for the children (*supra* Having seen paras. 5.b and 15).

16. For its part, the State argued that it has provided various protection arrangements, including the allocation of eight bodyguards of the Secretariat for Citizen Security and Protection of the state of Chiapas, given that raid of the petitioners' home was carried out by public officials of the Attorney General's Office for Justice of the state of Chiapas and in consideration that the petitioners have a justified fear of retaliation. As to the bodyguard that had resigned, according to the petitioners, the State noted that a substitute was appointed on November 15, 2011. It also confirmed that a close circuit monitoring device was installed in the petitioners' home.

17. Furthermore, the State reported that on December 1, 2011, a follow-up meeting took place concerning the implementation of the precautionary measures, and on that occasion the State reiterated "its willingness to continue with the implementation of precautionary measures ordered by the Commission in this matter." In this regard, it described the matters discussed, the offers made and the adoption of other measures (*supra* Having seen paras. 9 and 10).

3) Regarding the investigations

18. The Commission argued that no progress has been made regarding the investigation of the events that led to the filing of a request for provisional measures. In this regard, it stated that "the information indicates that the investigations are in the preliminary stages"

(*supra* Having seen para. 13). Furthermore, in its observations of January 16, 2012, the Commission emphasized that “the information provided by the State regarding the security of the potential beneficiaries, and on the investigations concerning the various threats received by the victims, remains the same as before the presentation of the request for provisional measures, which has been brought to the attention of the Inter-American Court, and that no new evidence has been provided for analysis.”

19. Finally, the Commission considered that in this matter a situation of extreme gravity and urgency exists, as required by Article 63.2 of the Convention for the Court to order measures of protection, given that there have been cycles of threats and harassment against the petitioners, which place their lives and personal integrity at risk, as well as “the ability of Mrs. Martínez [Martínez] and Mr. Guzmán [Ordaz] to continue their work in defense of human rights,” which constitute the point of irreparability of the consequences that this request seeks to avoid.

20. For its part, the State noted that prior to the Commission’s request for precautionary measures, it immediately became aware of the facts by way of the authorities of the Chiapas Government, began the relevant investigation and provided the beneficiaries with protection measures. Specifically, it reported that with regard to the alleged threat received on November 24, an Administrative record was opened which was raised to the rank of a Preliminary Investigation APO004/FEPONGDDH/M1/2010 and in which more than 79 procedures were carried out (*supra* Having Seen para. 4(a)). As to the alleged threats of October 20, 2011, the State argued that it opened Administrative record AA 0010/FEPONGDDH-MI/2011, for which it carried out various procedures (*supra* Having Seen para. 4(k)). In this regard, it indicated that “Mrs. Margarita Martínez’ assistance is required to obtain more evidentiary elements that may help to clarify the facts under investigation.” Moreover, it noted that the representatives stated that “it is necessary to eradicate the source of the risk facing the beneficiaries, for which reason they consider it appropriate not to file any further complaints for the moment.”

21. Finally, the State indicated that “it is necessary that the Court consider that as soon as a new threat has arisen, which has not materialized, the [S]tate has acted immediately with the investigations, together with the fact that the beneficiaries have protection measures that will be improved, in accordance with the decisions taken at the meeting of December 1, 2011.”. In particular, it argued that the Commission’s claim that “the Chiapas state government has [...] refused to investigate its officials” is unfounded.

22. The State concluded that the implementation of the precautionary measures has prevented irreparable harm to Margarita Martínez Martínez and Adolfo Guzmán Ordaz, as well as to the children Ada Saraí Martínez Martínez and Eduardo Abel León Martínez, and that it is not appropriate to adopt provisional measures in this matter, because it is not a case of extreme gravity and urgency.

Considerations of the Court

23. Based on the foregoing, this Court notes that the Inter-American Commission has argued that there have been failings in the implementation of the protective measures adopted in the context of the precautionary measures, which is evidenced, according to the Commission, by the cyclical occurrence of threats, harassment and stalking that took place until at least October 2011, while these measures were in effect. It has also alleged a lack of diligent investigation of those facts. However, the Commission has not presented specific information to substantiate the fact that, at present, these threats, acts of harassment and

stalking continue, nor has it contradicted the information provided by the State regarding the protective measures adopted, although it did mention the inadequacy of some of the measures adopted (*supra* Having seen paras. 4.a, 4.j, 5.a and 14).

24. Likewise, the Court notes that the State has offered several protective and security measures to the petitioners as specific mechanisms to protect their lives and personal integrity, in the context of the precautionary measures, and has expressed its willingness to implement those measures in the instant case. In this regard, the State pointed out that “with the prior consent of the petitioners and their representatives, on December 1, [2011], it held a follow-up meeting on the implementation of the [...] precautionary measures” granted by the Commission, with a view to improving them to ensure [the] security and protection” of the petitioners, thereby preventing irreparable harm to them.

25. The State also referred to the measures it has implemented, including the protective measure of accompaniment or escort provided by eight security guards, which is currently being carried out by agents of the Secretariat for Public Safety and Protection of the state of Chiapas; the installment of another closed circuit monitoring device in the petitioners’ home and the two emergency numbers of the Federal Police of San Cristóbal de las Casas, Chiapas provided to the beneficiaries. The State also indicated that “the Government Secretariat of Chiapas together with the City Council of San Cristóbal de las Casas will take the necessary steps to restore the street lightning service.” The State also mentioned that efforts are being made to correct the failings cited by the Commission in the implementation of the protective measures. Finally, it mentioned that the State and the representatives had agreed that, at the next meeting, “they [would] reach agreement on [...] a protocol for the implementation of the escort measure, to be drawn up by the Secretariat for Public Safety and Protection of Chiapas.” At the same time, the State reported that it had begun investigations related to the facts denounced.

26. Although there are elements to determine that the alleged threats, harassment and stalking against Margarita Martínez Martínez, Adolfo Guzmán Ordaz and the children Ada Saraí Martínez Martínez and Eduardo Abel León Martínez constitute situations of extreme gravity and urgency, as well as risk, the State has provided information on the specific mechanisms it has adopted in the context of the precautionary measures in response to such situations, and is therefore implementing protection measures in favor of the petitioners, which it presumably will continue to provide in order to guarantee their right to life and personal integrity. Therefore, and bearing in mind that since October 20, 2011 there have been no reports of new incidents affecting the petitioners, the Court considers that at present it is not necessary to order provisional measures.

27. Regarding the Commission’s argument that there has been no progress in the investigation into the alleged threats, harassment and stalking, the Court reiterates that, according to its case law, the analysis of the effectiveness of investigations and proceedings regarding the facts that give rise to the provisional measures forms part of the examination of the merits of the case⁹, and therefore it is not up to the Court to examine the effectiveness of the investigations carried out, or the alleged negligence of the State in those investigations.

⁹ Cf. *Matter of Monagas Judicial Confinement Center (“La Pica”)*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of July 3, 2007, Considering paragraph 23, and *Case of Caballero Delgado and Santana*. Provisional Measures regarding Colombia. Order of the Inter-American Court of February 25, 2011, Considering paragraph 21.

28. Notwithstanding its decision, this Court recalls that the States have the permanent and constant duty to comply with their general obligations under Article 1.1 of the Convention, that is, to respect the rights and freedoms recognized therein and to ensure their free and full exercise to all persons subject to their jurisdiction.¹⁰ Consequently, regardless of the existence of specific provisional measures, the State has a special obligation to guarantee the rights of persons in situations of risk and is required to undertake the necessary investigations to shed light on the facts and, if applicable, punish those responsible.¹¹

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

In exercise of its authority under Articles 63.2 of the American Convention on Human Rights and 27 of its Rules of Procedure,

DECIDES:

1. To reject the request for provisional measures submitted by the Inter-American Commission on Human Rights in favor of Margarita Martínez Martínez, Adolfo Guzman Ordaz, and the children Ada Saraí Martínez Martínez and Eduardo Abel León Martínez.
2. To set aside the case file related to the request for provisional measures of November 23, 2011, submitted by the Inter-American Commission on Human Rights.
3. To require the Secretariat to notify this Order to the Inter-American Commission on Human Rights and the State.

Diego García-Sayán
President

¹⁰ Cf. *Case of Velásquez Rodríguez*. Provisional Measures Regarding Honduras. Order of the Inter-American Court of January 15, 1988; Considering paragraph 3, and *Case of de La Cruz Flores v. Peru*, *supra* note 1, Considering paragraph 30.

¹¹ Cf. *Case of Velásquez Rodríguez*, *supra* note 10, Considering paragraph 3, and *Matter of Guerrero Galluci*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of November 21, 2011, Considering paragraph 8.

Manuel E. Ventura Robles

Leonardo A. Franco

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