

**ORDER OF THE PRESIDENT
OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 31, 2011**

**PROVISIONAL MEASURES REGARDING
THE UNITED MEXICAN STATES**

CASE OF FERNÁNDEZ ORTEGA *ET AL*

HAVING SEEN:

1. The Order of the then President of the Inter-American Court of Human Rights (hereinafter, the "Inter-American Court", the "Court" or the "Tribunal") of April 9, 2009, by means of which the United Mexican States (hereinafter, "Mexico" or the "State") was required to immediately adopt the measures necessary to protect the life and personal integrity of the following people: i) Otilia Eugenio Manuel and certain next-of-kin; ii) Inés Fernández Ortega and certain next-of-kin; iii) 41 members of *Organización del Pueblo Indígena Tlapaneco A.C.* (hereinafter, also "OPIT"); iv) 29 members of *Centro de Derechos Humanos de la Montaña Tlachinollan A.C.* (hereinafter, "Tlachinollan"), and v) certain next-of-kin of Raúl Lucas Castro and Manuel Ponce Rosas.

2. The Order issued by the Tribunal on April 30, 2009, by means of which the Tribunal ratified the Order of the Court's President and required the State to maintain the measures it had implemented, as well as to adopt the complementary measures that might be necessary to protect the life and integrity of the people before mentioned.

3. The Orders of the then President of the Tribunal of December 23, 2009 and the Inter-American Court of Human Rights of November 23, 2010, by means of which the requests for expansion of these provisional measures, as required by the representatives, were rejected.

4. The briefs presented between July 20, 2009 and May 20, 2011 and the annexes thereto, by means of which the State forwarded reports number one to twelve on compliance with the provisional measures.

5. The briefs presented between August 21, 2009 and April 25, 2011, by means of which the representatives forwarded observations to the State's reports before mentioned, they put forward allegations on the implementation of these provisional measures, they informed on the alleged occurrence of new incidents against the beneficiaries and requested the Tribunal to call a public hearing in order to provide further elements on the "situation" of and the "level of compliance" with these provisional measures.

6. The briefs presented between September 8, 2009 and May 25, 2011, by means of which the Inter-American Commission on Human Rights (hereinafter, the "Inter-American Commission" or the "Commission"), forwarded its observations to the State's reports.

CONSIDERING THAT:

1. Mexico ratified the American Convention on Human Rights (hereinafter, the "American Convention" or the "Convention") on March 24, 1981 and in accordance with Article 62 of the Convention, it accepted the binding 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 may, with respect to a case not yet submitted to the Court, at the request of the Commission, adopt such provisional measures as it deems pertinent. This provision is also regulated by article 27 of the Court's Rules of Procedure¹.

3. Article 27 of the Rules of Procedure –in its pertinent part- sets forth 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 pertinent, pursuant to Article 63(2) of the Convention.

[...]

9. The Court, or its Presidency if the Court is not sitting, may convene the Commission, the beneficiaries of the measures or their representatives, and the State to a public or private hearing on provisional measures.

a) Implementation of provisional measures

4. In relation to the security measures for the beneficiaries, the State informed that it had adopted several measures, including, among others, it provided communication equipment and it installed security infrastructure, it entered into the corresponding service agreements and it took steps to address the security requirements made by the beneficiaries.

5. The representatives of the beneficiaries requested the adoption of different security measures consisting in communication equipment for emergencies², security infrastructure³, and police escort services and patrolling. In their reports, they mentioned the existence of problems with some of the adopted measures, such as

¹ Rules of Procedure approved by the Court during its LXXXV Ordinary Period of Sessions, held from November 16 to 28, 2009.

² Including, among others, portable radios and mobile radio communication equipment; mobile satellite telephones; mobile telephones.

³ Including, among others, sensory lights; closed-circuit cameras; security – alarm system and security plates in different places.

communication equipment failures and irregularities in the police patrolling, for which reason they considered such measures to be ineffective.

6. The Inter-American Commission, among other considerations, emphasized that "the failures reported [...] were related to the implementation of measures that are important to guarantee the protection of the beneficiaries, specially before a situation of risk [and] that the State has not indicated when [some] of the measures requested since 2009 would be implemented, despite having repeatedly sustained that it had the mechanisms to proceed with said implementation".

b) Incidents against the beneficiaries

7. In relation to the alleged acts of threats or violence giving rise to the adoption of these provisional measures as well as new complaints filed by the representatives, Mexico forwarded information on the investigative proceedings and pointed out that the authorities had made inquiries regarding the denounced facts, they had obtained the statements of the aggrieved parties and witnesses and also, they had conducted expert examinations, among other measures. Moreover, it pointed out that "in order to comply with the State's international obligations on human rights and, in particular, to improve its judicial institutions to address, in a better way, the recommendations made in the report received on October 25, 2010, it requested the collaboration of Consejo General de la Abogacia Española [General Council of Spanish Bar Association] for the design of the project called 'protocol for the investigation of threats or attacks against human rights defenders in the State of Guerrero', the resolution of which is expected on May 31, 2011.

8. The representatives expressed their concern about some of the steps taken in the investigation into the facts that gave rise to the provisional measures and indicated that, despite the "pre-trial investigative procedures related to the facts for which the beneficiaries of these measures were injured[, these measures] do not show positive results". In addition, they informed on alleged new acts of threats or violence occurring in the months of June, August and November 2009; January, March, April, July, August and November 2010 and March 2011. In this respect, they indicated that "the number of acts of threats and harassment committed against the beneficiaries had increased since the granting of these provisional measures" and show "the continuance of a situation of high risk for [the] beneficiaries and the resulting need for a prompt and effective implementation of the measures ordered by the Tribunal".

9. The Commission took note of the information regarding the increase of threats and acts of harassment committed against the beneficiaries of the provisional measures, despite their enforcement. To this end, it pointed out that the situation of risk of the beneficiaries is not being adequately addressed. Furthermore, it sustained that "due to the information on the lack of implementation of the protective measures in view of the frequent acts of threats committed against the beneficiaries of these measures, it is essential and urgent to adopt specific measures to effectively ensure a proper protection of the beneficiaries".

10. Regarding the information provided by the parties, the Tribunal notes that since the adoption of these provisional measures by means of its Order of April 30, 2009, numerous acts of harassment, threats and violence against certain beneficiaries have

been reported. However, there is a discrepancy between the parties as to the implementation and the effectiveness of the protective measures. In view of the above and the time elapsed since the granting of these provisional measures, this Presidency deems appropriate to receive, at a hearing, updated and detailed information on the status of implementation of these provisional measures and the arguments of the State, the representatives and the Inter-American Commission on the possible persistence of the situation of extreme gravity and urgency that gave rise to the adoption of said measures in favor of the beneficiaries, in order to evaluate the need to maintain the measures in force.

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority granted by Article 63.2 of the American Convention on Human Rights and articles 24.1 and 25.2 of the Statutes of the Court, and articles 4, 27 and 31.2 of its Rules of Procedure,

DECIDES:

1. To convene the United Mexican States, 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 on June 28, 2011, from 11.15 A.M. to 1.00 P.M., in order for the Tribunal to receive their arguments on the provisional measures ordered in the instant case.
2. To require the Secretariat to notify this Order to the United Mexican States, the Inter-American Commission on Human Rights and the representatives of the beneficiaries of these measures.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary