

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JUNE 28, 2012**

**PROVISIONAL MEASURES
REGARDING HONDURAS**

MATTER OF GLADYS LANZA OCHOA

HAVING SEEN:

1. The Order delivered by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”, “the Court” or “the Tribunal”) on September 2, 2010, whereby it decided, *inter alia*, to:

1. Order the State of Honduras to adopt, forthwith, the measures necessary to protect the life and personal integrity of Mrs. Gladys Lanza Ochoa.
[...]

2. The briefs of September 21, 2010; January 19, March 18, and April 15, 2011, whereby the Republic of Honduras (hereinafter “the State” or “Honduras”) submitted reports regarding the implementation of the provisional measures.

3. The briefs of October 8 and December 23, 2010; February 21, May 27 and August 17, 2011, whereby the representatives of the beneficiary of the provisional measures (hereinafter “the representatives”) submitted their observations on the State’s briefs, presented information regarding the implementation of the measures and expressed their concern with the lack of effective compliance with the measures ordered.

4. The briefs of November 10, 2010, and March 24 and June 23, 2011, in which the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) referred to the implementation of the measures.

5. The Order of the President of the Tribunal of January 23, 2012, whereby it summoned the parties to a public hearing on compliance with the provisional measures (hereinafter “the hearing”) to be held on February 23, 2012, during the 94th Regular Period of Sessions of the Inter-American Court, in San José, Costa Rica.

6. The public hearing held on February 23, 2012, as well as the documents presented by the State on that occasion and the minutes of the meeting held by the parties and the Inter-American Commission after the hearing.

7. The briefs of March 20, May 22 and 30, 2012, by which the State submitted reports on the implementation of the provisional measures.

8. The briefs of March 2, April 10 and June 7, 2012, in which the representatives submitted their observations on the State's briefs, information regarding the implementation of the measures, and provided the aforementioned minutes of the meeting (*supra* Having Seen clause 6).

9. The briefs of March 19 and June 26, 2012, by which the Inter-American Commission submitted its observations on the implementation of the provisional measures.

CONSIDERING THAT:

1. The Republic of Honduras ratified the American Convention on Human Rights on September 8, 1977, and, in accordance with article 62 therein, it accepted the binding jurisdiction of the Court on September 9, 1981.

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 provisional measures as it deems pertinent in matters under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.” This provision is, in turn, regulated by article 27 of the Rules of Procedure of the Court. The provisions of Article 63(2) confer an obligatory character on any provisional measures ordered by this Court, in conformity with a basic principle of international law, supported by international jurisprudence, whereby States are required to comply with international treaty obligations in good faith (*pacta sunt servanda*).¹

3. In 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.² According to Article 63(2) of the Convention, three conditions must be met in order for the Court to be able to order provisional measures: a) “extreme gravity”; b) “urgency”; and c) the need “to avoid irreparable damage to persons.” These three conditions coexist and must be present in all instances in which the Court's intervention is sought. Likewise, the three conditions described must persist for the Court to maintain the protection measures ordered. If one of these conditions is no longer in effect, then the Court shall assess the need to continue with the protection so ordered.³

¹ See *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998, Considering clause 6; and *Matter of the Socio-Educational Internment Facility*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of April 27, 2012, Considering clauses two and three

² See Case of “*La Nación*” Newspaper. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, considering clause four and *Matter of the Socio-Educational Internment Facility* *supra* note 1; Considering clause four.

³ See *Case of Carpio Nicolle*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, Considering clause fourteen; and *Case of Haitian and Haitian-Origin Dominican Persons in the Dominican Republic*. Order of the Inter-American Court of Human Rights of February 29, 2012, Considering clause 5.

4. Based on its jurisdiction, within the framework of provisional measures, the Court shall only give due consideration to arguments that are strictly and directly related to the requirements of extreme gravity, urgency, and the need to avoid irreparable damage to persons. In order to decide whether to maintain in effect the provisional measures, the Court must determine whether or not the situation of extreme gravity and urgency that led to their adoption persists, or if there are new circumstances, equally grave and urgent, which merit their maintenance. Any other issue may only be brought before the Court through the corresponding contentious cases.⁴

a) Implementation of the provisional measures

5. In relation to the implementation of the provisional measures, the State informed the Court, among other aspects, that:

- a) On September 16, 2010, a meeting was held to monitor the measures so implemented. The beneficiary excused herself for not being able to attend the meeting, hence the meeting was held with her representatives. At this meeting, amendments were made to the implementation of the provisional measures as indicated by them and the following protective measures were agreed: daily patrol rounds outside the residence and work place of the beneficiary, as well as a direct liaison line with the National Police. Moreover, they agreed on that, in order to effectively comply with said precautionary measures, monthly meetings would be held, which could be also requested by the beneficiary, in written and "in advance";
- b) On February 16, 2012, a follow-up meeting was held, in which it was agreed that the State would comply with the patrolling decided when seeking a consensus on the protection measures ordered by the Court. Similarly, at this meeting, the representatives offered to submit a copy of all the claims filed before the Attorney General's Office, since the National Criminal Investigation Unit (*Dirección Nacional de Investigación Criminal*) was not aware of them. Furthermore, if "new events" occur, copies of the claims filed before the Attorney General's office would be forwarded to the Human Rights Unit of the Secretary of State in the Security Department;
- c) In the period prior to the public hearing, the State has faced obstacles in implementing the provisional measures as well as in submitting the corresponding compliance reports every two months to the Tribunal. However, the State sustained that it was taking the pertinent steps to resolve these deficiencies and to create a Human Rights Department to strengthen its capacity to respond to these types of cases, and
- d) At the public hearing, the State reported that the Attorney General's Office took several steps in the investigation, including taking statements from witnesses and requesting "phone call reports from the petitioners as well as with respect to the number from which the threatening calls were made. However, the beneficiary did not appear before the Attorney General's Office to provide information that could be helpful in the investigation. The

⁴ See *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 29, 1998, Considering clause six, and *Case of the Socio-Educational Internment Facility*, *supra* note 1, Considering clause six.

information provided by the beneficiary is incomplete, given that “[her] presence [is] required [...] as well as some information that [she could provide] to the authorities”;

6. After the public hearing, the State reported that it took steps to hold meetings with high-ranking State’s authorities within the shortest time possible. In this regard, it held a meeting on March 5, 2012, in which the Republic’s Attorney General and the Sub-Secretariat of Security expressed to the representatives that they took the necessary steps and calls to arrange the meeting with the high-ranking State’s authorities, thus demonstrating its good faith in resolving the instant case. In addition, the General Prosecutor agreed on a hearing to be held on March 8, 2012, which the representatives did not attend.

7. The State further alleged that it agreed with the representatives on the need to implement a comprehensive program for the protection of human rights defenders. In this sense, there have been rapprochements with State institutions and non-governmental organizations to prepare a proposal for the program. However, this program will not be an obstacle for the immediate implementation of effective protection measures for the beneficiary. Consequently, the State determined that it falls upon the beneficiary to decide which measures are suitable, “either by assigning government or private personnel [...] to provide security or through the acquisition of some type of technological security or monitoring device.”

8. In the communication of May 30, 2012, the State informed that it had effectively complied with the car or motorcycle patrolling outside the residence and work place of the beneficiary. In addition, it indicated that “it [had] request[ed] to the beneficiary or her representatives to provide a clearer reference as to the type of measures requested, and to confirm or establish new timetable and days, if necessary, for the patrolling and police presence in the area.” Finally, the State informed that it was making the necessary arrangements to hold the meeting requested” with the President of the Republic.

9. By means of different communications, the representatives indicated, *inter alia*, that:

- a) The implementation of the provisional measures has been held up by obstacles such as distrust of police and the occurrence of at least five incidents between October 2010 and August 2011, which have affected the safety of the beneficiary and which were denounced before the Office of the Human Rights Prosecutor and communicated to the Court;
- b) From September 2010 and until the date of the public hearing, the State had not effectively complied with the car and motorcycle patrolling rounds so agreed. In addition, these had been sporadic, and “with the sole objective of having someone sign the logbook kept by the authorities, only as a mere formality,” and
- c) No progress has been made in the investigation of the threats.

10. After the public hearing, the representatives also indicated that the patrolling of the headquarters of the “Visitación Padilla” foundation had been replaced by “police presence during a few hours per day,” which affects the beneficiary’s work, given that the users of the organization are afraid to enter the institution. They further alleged that it is necessary for the State to implement, as soon as possible, the patrolling of Visitación Padilla

organization and the residence of the beneficiary under the terms agreed during the meeting held on February 16, 2012, and to rebuild the beneficiary's trust in the authorities. Regarding the meeting with the high-ranking State's authorities, "they value[d] the efforts made by the State to hold several meetings with the leaders of [state] institutions [, however] they reiterate[d] their request for a single joint meeting, [...] to obtain a political commitment from the highest authorities that the harassments will be properly investigated." On April 9, 2012 they suggested to the State five possible dates for the meeting with the President of the Republic.

11. In addition, by means of a communication of June 7, 2012, the representatives indicated that Mrs. Lanza Ochoa "requires to be informed 15 days in advance" of any meeting in order to organize her schedule and "take her own self-protection measures". Moreover, on May 7th, 2012, the beneficiary signed the authorization as injured party (*autorización de ofendida*) so that the Public Prosecutors Office investigates the crime of threats committed against her, recorded under number 1731, and on May 14, 2012, she appeared before the Public Prosecutor's Office in order to authorize a system analyst to assess her email account.

12. In turn, during the public hearing the Commission indicated that:

- a) In the instant case, there is no perspective that assimilates the structural problems hindering the protection of human rights defenders in Honduras, which affects the efficacy of the implementation of the provisional measures in favor of the beneficiary;
- b) There is no general perspective on human rights defenders either. Consequently, it is necessary to address the issue in a comprehensive manner, including: i) safety, ii) the need to foster conditions so that the beneficiary is able to do her specific work, iii) a serious and independent assessment of the risk; iv) taking the beneficiary's opinions as determining factors; v) creating an environment and a mechanism of trust for the beneficiary; and vi) to investigate the threats and harassments that led to the adoption of the measures of protection; and
- c) The current situation calls for an immediate response, starting with an initial dialog by which protective measures are offered to Ms. Gladys Lanza Ochoa so that she can assess them and request the best measures applicable to her situation.

13. In turn, the Commission noted that there are no communication channels and coordination actions between the beneficiary, her representatives and the State's authorities, "a circumstance that hinders the implementation of the protective measures". In addition, it considered it was important for the State to foster trust between government actors and the beneficiary, so that the State may design security schemes that are appropriate and effective for her protection.

14. The Inter-American Court takes cognizance of the actions taken by the State in order to implement the provisional measures ordered by the Court and agreed with the representatives. Nevertheless, in spite of the attempts to coordinate after the public hearing held in the instant case (*supra* Considering clauses 6 and 10), the Tribunal notes that there continues to be discrepancies among the parties regarding compliance with the measures of protection. Specifically there are discrepancies in: the way to conduct the police patrolling of

Visitación Padilla organization and the beneficiary's residence; the investigation of the denounced facts, and the form of and participation in the meetings to be held by the representatives and the State. In this regard, the Court highlights the need to guarantee the active participation of the State and the representatives in the effective implementation of the instant provisional measures. To this end, it is essential for the representatives to collaborate with the authorities, by presenting the corresponding claims, informing the authorities on the way the protection should be provided to the beneficiary, and attending the meetings so agreed. Similarly, the State must provide the necessary material conditions to comply with its express commitment to provide the measures of protection that the beneficiary considers suitable.

b) Information regarding the risk faced by the beneficiary

15. The State informed that it held meetings in February and March 2012, in which it agreed to conduct the patrolling established together with the representatives, both at the beneficiary's workplace and at her residence. In addition, to facilitate communication between the parties, in February 2012, it was created a list with contact information of the representatives of the State and of the beneficiary.

16. Moreover, in the report of May 22, 2012, the State indicated that "it has encountered a number of limitations [to investigate the threats] as the victim has not consented to appearing before [the] Attorney General's Office to provide a specific and detailed account of the facts. In addition, there is no authorization for the Attorney General's Office to continue investigating the case [given that] the crime of threats [...] can only be prosecuted by the Attorney General's Office upon request of the victim, as it is classified as a Public Action Dependent on a Specific Request." In turn, "the victim has been summoned [to appear before the Human Rights Prosecutor's Office] on four occasions, and she has still not appeared; in addition [...] three visits have been made to the headquarters of Visitación Padilla organization, workplace of the victim, where it has not been possible to locate her, consequently it is difficult to further the investigation without the victim's cooperation."

17. The representatives indicated that since the ordering of the provisional measures, there have been five incidents that have affected the security of the beneficiary, facts that were reiterated during the public hearing, namely:

- a) The entrance of unknown persons to the headquarters of Visitación Padilla organization on December 31, 2010, during the early hours of the morning;
- b) On March 21, 2011, unknown individuals threw a tear bomb in the parking lot of the beneficiary's residence;
- c) On March 25, 2011, three prisoners transport vehicles parked outside of Visitación Padilla organization, and "approximately 10 policemen" got out of them. At that time, as an alleged measure of protection, the beneficiary and the employees of said institution left said office screaming and calling on neighbors, hence the policemen decided to leave;
- d) The "suspicious" presence of two unknown individuals outside the headquarters of Visitación Padilla organization on July 12, 2011, at 5.30 p.m., who after insisting "for a few minutes" on entering "to file a claim [...] they were picked up by a luxury SUV with tinted windows;"

e) On August 10, 2011, the beneficiary was chased by a motorcycle after participating in a TV show.

18. In addition, at the hearing, the representatives indicated that the last fact against the beneficiary, which took place on August 10, 2011, was denounced before the Attorney General's Office (*supra* Considering clause 17.e). After that, unknown calls have been made with certain sounds and unknown e-mails with threatening messages have also been sent. These practices are permanent and "are part of the abnormality of the situation." Similarly, the representatives indicated that the day before the public hearing, on February 22, 2012, other Honduran human rights activists received three threatening messages. Recently, the representatives indicated that:

a) on March 30, 2012, a former colleague of Mrs. Lanza Ochoa reported that "two men dressed in civil clothes but looking like security agents stopped him and asked him about "this woman in the office"", and

b) on May 18, 2012, when the beneficiary was heading to her office in the morning, she observed that two men, each one on a motorcycle wearing helmets, were at the corner of her house, apparently checking their motorbikes. Later, after walking seven blocks to the bus station, she "felt the wind [from one of the motorcycles passing close to her" when she was boarding the bus.

19. In turn, the Inter-American Commission sustained that the State "should give priority not only to prevent these facts from occurring but also to investigate their causes and those responsible, and their relation to the facts that led to the adoption of these provisional measures." Moreover, it indicated that the State should adopt urgent and necessary protective measures to prevent the occurrence of facts as the ones described by the representatives and to properly respond to them.

20. The Tribunal considers it is appropriate to reiterate that provisional measures have an exceptional nature and are therefore ordered having regard to the needs for protection and, once ordered, they must be maintained while the basic requirements of extreme gravity and urgency and need to prevent irreparable damage to the rights of the persons protected by them exist.⁵

21. From the information provided by the parties, the Tribunal observes that, in spite of the measures ordered since the adoption of the Order of September 2, 2010, several incidents against the beneficiary, which have been described in Considering clauses 17 and 18 *supra*, have taken place. Consequently, the Court reiterates that the State must provide the beneficiary with adequate protection to her personal integrity, in conformity with that ordered in the instant provisional measures and that agreed with the representatives.

22. The Court calls to mind that when ordering measures of protection, the standard for assessment of the requirements by the Court or its President is *prima facie*, hence at times it is necessary to apply presumptions to cases when protection is required.⁶ In this regard,

⁵ See *Case of the Constitutional Court. Provisional Measures regarding Peru*. Order of the Court of March 14, 2001, considering clause three; *Matter of Carlos Nieto Palma et al. Provisional Measures regarding Venezuela*. Order of the Court of January 26, 2009, considering clause twenty; and *Matter of the Kankuamo indigenous community, supra* note 2, considering clause four

the representatives acknowledged at the public hearing that they have not denounced certain threatening acts against Ms. Lanza Ochoa before the State authorities since August 10, 2011. Moreover, on May 7, 2012, the beneficiary signed the authorization as injured party so that the Attorney Office is able to investigate the threats issued against her (*supra* Considering clause 11). However, they indicated that certain intimidating practices “are permanent,” such as threatening phone calls or emails, and the recent facts reported. Based on the foregoing, the Court observes that there are indications to presume the context of specific danger and practices of intimidation to the detriment of the beneficiary; hence the risk of infringement of her right to life and personal integrity still exists.

23. In view of the risk faced by the beneficiary of the measures, the Court values the State’s position with regard to the adoption of, among other measures, the actions necessary to resolve the deficiencies in the implementation of the provisional measures by holding work meetings, providing adequate security measures in her favor, and the willingness to implement a comprehensive program for the protection of human rights defenders (*supra* Considering clause 7).

24. In this respect, the Court calls to mind that article 1(1) of the Convention establishes the general obligations of State Parties to respect the rights and freedoms included therein and to guarantee the free and full exercise of those rights to all persons that are subject to its jurisdiction. In this regard, it is necessary for the State to maintain communication with the beneficiary and her representatives to guarantee the implementation of the suitable measures according to the specific risk situation of Ms. Lanza Ochoa.

25. Couple with the foregoing, the Court deems necessary for the representatives to submit to the Tribunal, within the term established in the operative paragraphs of this Order, an updated assessment of the risk situation of the beneficiary of these measures. Additionally, the representatives must inform about the implementation of the measures agreed with the State for her security (*infra* Operative paragraph 3).

26. In turn, the State must submit detailed information regarding the measures of protection agreed with the representatives and their implementation (*infra* Operative paragraph 4).

27. With regard to the domestic investigations, the Court reiterates that the State has a special obligation to guarantee the rights of persons in risk situations, and that it must conduct the investigations necessary to clarify the facts, followed by the consequences established by the applicable law.⁷ However, the analysis of the effectiveness of said investigations and procedures regarding the facts that led to the adoption of these provisional measures corresponds to the evaluation of the merits of the case.⁸

⁶ See *Case of Raxcacó Reyes et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of August 30, 2004, Considering clause ten, and *Case of González Medina et al.* Provisional Measures regarding the Dominican Republic. Order of the Inter-American Court of Human Rights of August 30, 2011. Considering thirteen.

⁷ See *Case of Velásquez Rodríguez.* Provisional Measures regarding Honduras. Order of the Court of January 15, 1988, Considering clause three; *Matter of Fernandez Ortega et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of February 20, 2012, considering clause thirty-three.

⁸ See *Matter of Pilar Noriega García et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering fourteen, and *Matter of Martínez Martínez et al.* Provisional measures regarding Mexico. Order of the Inter-American Court of Human Rights of March 1, 2012, Considering twenty-seven.

28. Based on the foregoing, the Court deems that the provisional measures shall be maintained, based on which the State has the obligation to protect the life and personal integrity of Ms. Gladys Lanza Ochoa.

THEREFORE:

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 27 of its Rules of Procedure,

DECIDES:

1. To reiterate to the State to continue adopting forthwith the measures necessary to protect the life and personal integrity of Ms. Gladys Lanza Ochoa, taking into consideration the specific risk circumstances she is facing, in conformity with Considering clauses 14 to 26 of this Order.
2. To reiterate to the State to take all steps necessary so that the protection measures awarded in this Order are planned and implemented with the participation of the beneficiary or her representatives, so that the measures are provided diligently and in an effective manner. In addition, the State must keep them informed, in general, as to the progress with their execution, in conformity with that indicated in Considering clauses 14 and 21 to 26 of this Order.
3. To require the representatives to submit, no later than September 6, 2012, information regarding the beneficiary's situation, including an assessment of the risk situation and the measures of protection agreed consistent with Considering clause 25 of this Order.
4. To require the State to continue reporting to the Inter-American Court of Human Rights every three months, as of the date of notification of this Order, on the provisional measures adopted, in accordance with Considering clause 26 of this Order.
5. To request the representatives of the beneficiaries to submit their observations on the State's report within four weeks, as from the date of notification of the State reports indicated in the previous operative paragraph. In addition, the Inter-American Commission on Human Rights must submit its observations on the briefs of the States and of the representatives mentioned above within two weeks, as from the receipt of the corresponding brief of observations of the representatives.
6. To order the Secretariat to notify this Order to the State of Honduras, the Inter-American Commission on Human Rights, and the representatives of the beneficiary.

Diego García-Sayán
President

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