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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 1/2024**

Precautionary Measure No. 1088-23  
Irma Elizabeth Palencia Orellana regarding Guatemala<sup>1</sup>  
(Justice of the Supreme Electoral Tribunal)  
January 13, 2024  
Original: Spanish

**I. INTRODUCTION**

1. On December 5, 2023, the Inter-American Commission on Human Rights (“the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures presented by the applicant<sup>2</sup> urging the Commission to require that the State of Guatemala (“the State” or “Guatemala”) adopt the necessary measures to protect the rights of Irma Elizabeth Palencia Orellana, in her capacity as judge of the Supreme Electoral Tribunal of Guatemala, who was at risk in the country.
2. In the terms of Article 25 of its Rules of Procedure, the IACHR requested information from the parties on December 7, 2023. The applicant provided information on December 11 and 26, 2023. The State submitted its report on December 13, 2023.
3. Upon analyzing the submissions of fact and law furnished by the parties, the Commission considers that the information presented shows *prima facie* that Irma Elizabeth Palencia Orellana is in a serious and urgent situation, given that her rights to life and personal integrity are at risk of irreparable harm. Therefore, it requests that Guatemala: a) adopt the necessary measures to guarantee the rights to life and personal integrity of Irma Elizabeth Palencia Orellana; b) take the necessary measures to ensure that Irma Elizabeth Palencia Orellana can continue to perform her duties as a sitting justice of the Supreme Electoral Tribunal of Guatemala without being subjected to threats, intimidation, harassment, or acts of violence; c) consult and agree upon the measures to be implemented with the beneficiary and her representatives; and d) report on the actions taken to investigate the alleged events that led to the adoption of this resolution, so as to prevent such events from reoccurring.

**II. SUMMARY OF FACTS AND ARGUMENTS PROVIDED BY THE PARTIES**

**A. Information provided by the applicants**

4. According to the applicants, Irma Elizabeth Palencia Orellana, is a sitting justice of the Supreme Electoral Tribunal (TSE) as of her election on March 17, 2020. She was appointed President of the TSE from August 14, 2022 to October 26, 2023. The proposed beneficiary indicated that she is reportedly at risk following the electoral process that began on January 20, 2023 and ended on October 31, 2023. In this regard, she referred to the persistent and systematic political persecution that she allegedly experienced as a justice of the TSE which started to occur before, during, and after the first and second round of elections (June and August 2023), a period that she served as president of the TSE. The applicant considers that the objective is to unlawfully revoke her position as a justice given her actions to defend the electoral results. Moreover, it was indicated that the main aim is reportedly to annul the results of the election with the help of justices who would be appointed in the TSE.

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<sup>1</sup> In accordance with Article 17(2)(a) of the Commission’s Rules of Procedure, Commissioner Edgar Stuardo Ralón Orellana, a Guatemalan national, did not participate in the debate or deliberation of this matter.

<sup>2</sup> The requesting party requests the reservation of their identity.

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5. From the information provided, the applicant referred to a series of threats that have circulated on social networks against the proposed beneficiary. In this regard, she indicated the following:
- Since January 28, 2023, messages have been circulating on social networks threatening and inciting to set fire to the facilities of the Supreme Electoral Tribunal and to the justices “BURN THEM ALIVE”;
  - During 2023, disinformation and false messages about the proposed beneficiary, which were allegedly “making up stories” about her personal and family life, were circulated on the social network *Twitter* by several *netcenter* users. She is reportedly portrayed before the Guatemalan society “with an unreal image to justify the systematic attacks” against her;
  - On social networks, and on huge billboards placed in the main avenues of Guatemala City, certain groups or individuals show photographs of her “as someone that society should hate”. They also allegedly attacked her work as President of the Supreme Electoral Tribunal. This allegedly violates her freedom, integrity, and her right to move freely in the streets of the country as she fears an attack derived from the stigmatization she is subject to;
  - In August 2023, she mentioned to the publication of photographs of the justices of the Supreme Electoral Tribunal during a protocol act by the netcenter *Yes Master*, who alluded to the act with disinformation and falsely denigrating them;
  - There are alleged publications in which they accuse the proposed beneficiary to be “responsible for the electoral fraud during the first round” and refer to her and three other justices as “traitors”.
6. In addition, the applicant indicates that Ms. Irma Elizabeth Palencia Orellana is being subjected to surveillance, persecution, and harassment on social networks. Her location is allegedly published when she is in public places (e.g., funeral home, shopping mall). For these reasons, the proposed beneficiary decided to stop carrying out normal social and daily activities, as well any activities with her family. She just went to work and took shelter in her residence. In addition, in several programs of the digital channel “*Vea Canal*” allegedly broadcast hate campaigns and falsehoods against the justice. They reportedly stated that “there was fraud and the elections should be repeated”, which distorts the electoral process.
7. The applicant alluded to events to the detriment of the proposed beneficiary within the framework of the protests. For example, on February 2, 2023, a group of people gathered in front of the TSE premises to express their dissatisfaction with the candidate registration process and threatened to take de facto action against the TSE justices. Some of the individuals allegedly incited setting fire to the Court’s facilities, which required the urgent evacuation of the TSE offices. Groups of people continuously gathered in front of the TSE facilities and shouted offensive, slanderous, and discrediting phrases against the TSE justices and the 2023 electoral process.
8. The proposed beneficiary also reportedly received threatening messages on her phone. On July 12, 2023, following the announcement of the second election round, the proposed beneficiary received a text message to her phone number threatening her and her family. The message stated: “Everything you do and say from now on from Chinautla, your whole family is in danger, you and the other sons of bitches. Regards, Organized Crime. WE DON ‘T WANT LIZ MEDRANO IN CHINAUTLA TAKE CARE OF YOUR FAMILY, BITCH, IT’S TIME TO CHANGE YOUR DECISIONS.” On August 19, 2023, the day before the voting to elect the President and Vice President of the Republic, she once again received four threatening text messages on *WhatsApp*, which read: “*Because it can affect even your family*”. In an audio and video which were quickly deleted by the sender, which displayed no image and just a black background, the following

was stated: *“Eliza listen, I just want you to know that we are aware of everything you are doing and that if the fraud is carried out, we are going to take action on the matter, we are going to fuck up your family, we are going to fuck you up, so consider this warning, you hear us?”*. In addition, the request indicated that, since several months ago, when the proposed beneficiary uses WhatsApp to make calls, at the conclusion of the call, it seems that the call is still in progress. During this time, she is unable to make another call, and she therefore believes that her privacy is being violated.

9. On August 3, 2023, a written complaint was filed with the Public Prosecutor’s Office, requesting, among other aspects: the persons responsible for the threat be investigated and identified; and that jurisdictional control be required for judicial authorizations for the report of the telephone number from which the threat was sent. The Public Prosecutor’s Office opened an investigation file by the Prosecutor’s Office for Crimes against Justice Operators and Trade Unionists (*Fiscalía de Delitos contra Operadores de Justicia y Sindicalistas*). On August 23, 2023, the proposed beneficiary was requested to provide a report on the circumstances of time, manner, and place of the reported events, where she was at the time of receiving the text messages, whether she has been the subject of previous threats, whether she has had any problems from which she suspects the threats are derived, and whether the TSE had a security plan in place for the justices. In this regard, it was noted that at the Public Prosecutor’s Office did not inform the proposed beneficiary whether it arranged security measures in her favor and/or in favor of family due as a result of the complaint filed. The request indicated that all the threats circulating in social networks are of public knowledge. In these threats, she is allegedly attacked, stated that her days are numbered, and that she will be imprisoned or a fugitive. In several cases, as part of the care protocol that is in place when an individual faces a risk, briefs should be sent to the National Civil Police in order to activate security measures. Regarding the threats of August 19, 2023, the Public Prosecutor’s Office became aware of them on August 25, 2023.
10. Regarding the facts related to the proposed beneficiary being followed, the request mentioned motorcycles that allegedly followed her when she was traveling from work to her residence, as reported by one of the security agents. In October 2023, it was reported that, as she left the Court parking lot with her two agents, a gray double cab polarized glass pickup with hidden license plates appeared behind her vehicle and very near it. This individual reportedly followed them for a long time. The driver of his security made several maneuvers to lose them.
11. Regarding the protection plan implemented in favor of the proposed beneficiary, it was reported that since she took office as President Justice on August 14, 2022, she was assigned two officers of the National Civil Police (PNC), to escort the vehicle she drives and to stay near her. Additionally, on the part of the Court, all Justices allegedly have the possibility of having two people (plus a driver). Once she is dropped off at her residence, they reportedly leave her there, and her personal protection protocol is finished. The protection persons provided by the Court allegedly return to their respective residences. The Ministry of the Interior police officers allegedly stay overnight at a location that the proposed beneficiary indicates and she must also bear the cost of their housing. These are reportedly assigned in eight day shifts; each shift has four assigned agents. Initially they were two National Civil Police officers dressed as a civilian, and four officers.
12. The request indicated that, in May 2023, the person in charge of the institutional personal security had resigned a few days before the elections, citing personal reasons. In September, a few days after the second electoral round, the other institutional agent began to behave inappropriately. Upon having missed more than the allowed time off and without reasonable excuse, he was dismissed. In the midst of the electoral process, the proposed beneficiary reportedly noticed that her security plan weakened. The agents were not replaced until October, they are therefore new and the necessary trust in them is just developing.

13. In December 2023, three of the security agents were allegedly on vacation, one from the first shift and two from the second shift. The beneficiary proposal considers that it would be “a weak, varying plan that depends on an external authority, with which she has no communication”. To date, no trustworthy professional risk assessment has been conducted to help the proposed beneficiary feel safe. Regarding protection measures in favor of the family, it was indicated that there is no protection mechanism of any kind.
14. Regarding the alleged criminalization and political persecution for the work she exercised as Presiding Judge of the TSE, it was noted that she was the subject of various actions to withdraw her immunity. During 2023, six pre-trial proceedings were filed against the justices of the TSE. Given her position as then Presiding Judge, her situation would be differentiated in terms of future actions of requests for preliminary trial that were made against her. One of the preliminary trials would be for the crimes of fraud, breach of duties and abuse of authority, allegedly incurring irregularities in the signing of the administrative contract in the acquisition of the Transmission System of Preliminary Electoral Results (TREP).<sup>3</sup> The request for the waiver of immunity by the Administrative Crimes Prosecutor’s Office was filed on September 27, 2023. On November 30, 2023, the right to pre-trial proceedings was withdrawn from the proposed beneficiary and three other justices. Publicly circulated that arrest warrants had been issued against her, without due process being followed. In addition, it was alleged that the removal of immunity from the TSE judges, especially from the proposed beneficiary, had been planned and negotiated at the highest level of the State, which would confirm that the persecution would be political. The request indicates that the proposed beneficiary did not have access to the information related to this pre-trial process, ignoring who denounced it and its arguments. Consequently, a series of constitutional actions for amparo were reportedly formalized before the Constitutional Court of Guatemala.
15. As part of the context of criminalization related to the electoral process, the request referred to actions taken against political organizations to prevent their participation in the electoral contest, including that of the Seed Movement Political Party,<sup>4</sup> as a result of which the judicialization of the electoral process would be exacerbated and the work carried out by the TSE would be affected. Moreover, the information provided alludes to five raids carried out in the different offices of the TSE by the Special Prosecutor’s Office Against Impunity (FECI).<sup>5</sup> The last search was carried out for more than 20 uninterrupted hours, during which time the collaborators were not allowed to use the telephone and “with excessive manifestation of arrogance.” In such a diligence, all the original electoral records number 4 and number 8 have been seized, which would violate the chain of custody of the vote and the purity and integrity of the electoral process.
16. The request reported on 27 complaints filed against TSE officials,<sup>6</sup> including their justices and the then president of the TSE, the current proposed beneficiary. Such complaints reportedly led to multiple investigative actions by the Public Ministry. It was pointed out that, in several cases, there would be no access to the investigation files, on the grounds that they would be subject to confidentiality. It was also indicated that there are more than 170 amparo actions against the TSE due to electoral issues, such as

<sup>3</sup> According to the request, the questioning of the TREP was allegedly used repeatedly by the Public Ministry, which allegedly indicated that electoral fraud was committed through it and investigates this as part of a “comprehensive investigation” within the investigation against the Movimiento Semilla Political Party.

<sup>4</sup> On July 12, 2023, the Seventh Judge of First Criminal Instance, at the request of the Special Prosecutor’s Office against Impunity of the Public Prosecutor’s Office (FECI), issued an order of provisional suspension of the legal personality of the Movimiento Semilla Political Party.

<sup>5</sup> According to the requesting party, all the searches were allegedly carried out with the judicial authorization of Judge “A” of the Seventh Pluripersonal Criminal Court, Narcoactivity and Crimes Against the Environment for the investigation related to alleged false signatures of adherence to the constitution of the political party Movimiento Semilla.

<sup>6</sup> Related to candidate registration issues, forgery of signatures on adherence sheets and affiliation for the constitution of a political party, administrative processes related to the contracting of the computer system for the transmission of electoral results, electoral fraud, among others.

the validity of the election for president and vice president of Guatemala. Regarding the legal actions filed by the proposed beneficiary within the framework of the alleged situation, two amparo actions were filed with the Constitutional Court regarding the searches.<sup>7</sup> These were referred to the Supreme Court of Justice pending resolution. Also, a question of competence was filed before the Constitutional Court, to determine if a criminal judge has competence to suspend a political party.

17. After the withdrawal of immunity, the proposed beneficiary proceeded to request a two-week work leave that ended on December 15, 2023, and requested a vacation period. However, she does not have any guarantee of fact and right to return to exercise her position in dignified conditions, of freedom and security, in the face of harassment and intimidation due to the political persecution of which she is the victim. The request alleges that in her “alleged vacations,” which would be rather an unjust and voluntary confinement in order to protect her integrity, freedom, and security, she has left the country as a “retreat (confinement) in solitude and personal isolation” without security, with limited and brief communications, without information on exactly where she is, with fear that her family will be affected at any time. Finally, she is reportedly waiting for the amparo actions filed, which are still pending resolution, to be resolved in her favor.

**B. Response from the State**

18. The State considered that the procedural requirements are not met. It also recalled the principles of complementarity and subsidiarity. It pointed out that the proposed beneficiary has security details assigned for her protection. It was reported that on March 17, 2020, the Congress of the Republic elected Ms. Irma Elizabeth Palencia Orella as Chief Justice of the Supreme Court for the period 2020-2026, and she served as Chief Justice from August 14, 2022, to October 26, 2023.
19. Regarding the electoral context, the State indicated that the government transition process that began on September 4, 2023, when the first meeting between government authorities and President-elect Bernardo Arévalo took place, with the participation of the Secretary General of the Organization of American States (OAS). The State highlighted the relevant actions and coordination around the celebration of the solemn act of transmission of presidential command on January 14, 2024. It added that the amparo identified with File 6175-2023 would be known, which is still pending, and within which, a provisional amparo was issued that orders the preservation of the democratic regime of the State, especially the alternation in the exercise of power, which must operate on the date provided for in the Constitution. On another note, criminal cases with incidents in the electoral process are still underway before the internal jurisdiction of the State.
20. On September 27, 2023, the Public Ministry informed the decision to request the withdrawal of the personal immunity of the justices of the TSE, for a criminal case, related to anomalies detected in an administrative contract for the acquisition of a computer system that would be used for the Transmission of Preliminary Electoral Results (TREP). On December 1, it was decided to withdraw the personal immunity of Irma Elizabeth Palencia, Ranulfo Rafael Rojas, Gabriel Vladimir Aguilera, and Mynor Custodio Franco, in their capacity as justices of the TSE, for the possible commission of crimes perpetrated in the acquisition of the TREP.
21. In the course of the aforementioned process, four amparos were filed in the Constitutional Court (CC): two amparos filed by the four aforementioned justices of the TSE; one amparo filed by Judge Blanca Odilia Alfaro Guerra; and another amparo filed by three alternate justices. On November 21, 2023, the plenum of justices of the CC unanimously decided to deny the amparo presented by the four sitting

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<sup>7</sup> Through these amparo actions, constitutional protection was requested for future, certain and imminent threats due to the raids of July 13 and 30, 2023; as a result of the raid on the Electoral Process Operations Center; and as a result of the raid on the TSE headquarters.

justices, not noticing any risk to constitutional rights, so the preliminary trial process continued. To date, this is allegedly the only preliminary trial (*antejuicio*) that has prospered against the proposed beneficiary.

22. Regarding the protection measures implemented in favor of the proposed beneficiary, the State reported that it is providing security measures in her favor. The Ministry of the Interior (MINGOB) explained that Ms. Palencia Orellana has been a beneficiary of personalized security measures since August 14, 2022. Regarding the risk analysis of the MINGOB, it was reported that:

*“on 10/05/2023, personnel of the Risk Analysis Department carried out risk analysis on 07 justices of the Supreme Electoral Tribunal, which included Judge Irma Elizabeth Palencia Orellana, in which it was determined that she was at a medium risk level derived from the functions she exercises, as President of the Supreme Electoral Tribunal of the Constitutional Body in reference and maximum authority in electoral matters and political control, linked to the political landscape and possible socio-political and cultural scenario at the national level. Where they recommended continuity of the security detail of which she is the beneficiary (...).”*

23. The MINGOB also indicated that:

*“On 02/10/2023 personnel [sic] Risk Analysis Department, carried out risk analysis on Irma Elizabeth Palencia Orellana, President of the Supreme Electoral Tribunal, in which it was determined that she was at a Medium risk level, derived from the functions exercised by her as an independent constitutional body and maximum authority in electoral matters and because there are indications of certain and imminent direct threats that could materialize against the life and physical integrity of the aforementioned justice. Where they recommended the INCREASE, from 2 to 4 Police Agents by the Division of Protection of Persons and Security and in this way complement the ideal security detail together with the 4 Police Agents of the Division of Special Police Forces (...).”*

24. The State indicated that the level of risk of the proposed beneficiary is medium, which is typical of the position she holds. In this sense, security experts have not detected a determinable risk other than the average risk that every judge of the TSE faces by the very nature of the functions. In addition, [the State] stressed that the level of risk had not increased from one analysis to the other. However, given what the proposed beneficiary stated about slogans in public demonstrations, publications in social media and intimidating messages, it was allegedly categorized as “indications of threats”, and a prevention response was given with the increase of her security.
25. In addition to the security detail provided by the MINGOB, the TSE made it known that the proposed beneficiary “is assigned an armored vehicle, a pilot and 2 security employees,” which would strengthen her personal security detail. Thus, the proposed beneficiary is said to have a security detail, recently reinforced, made up of a total of ten security officers, eight from the MINGOB and 2 from the Security Department of the TSE; and also has an armored vehicle.
26. Regarding the intimidating messages received by the proposed beneficiary on July 12, 2023, the Public Ministry opened the ministerial folder within which the crime of threats was investigated. Regarding this investigation, the Public Ministry reported that:

*“to follow up on the complaint filed by Judge Irma Elizabeth Palencia Orellana on August 8, 2023, where she denounced intimidating messages against her [...] The Prosecutor’s Office proceeded to request the jurisdictional control of the ministerial folder MP001-2023-43752, and to request the corresponding judicial authorizations with which the information of the reported telephone*

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*was requested, from the telephone companies operating in the country, having carried out the said procedures, the Prosecutor's Office was able to establish that the reported telephone number does not contain registered data regarding the person who made the purchase, given that the said number was given as a promotion as a gift, to a person who made the purchase of another telephone number different from the one from which the threatening messages were sent; however, the Prosecutor's Office proceeded to individualize this person through the different public information records, establishing the name [P.A.M.G.I.]. [...]"*

27. As part of the actions of the Prosecutor's Office, it proceeded to require security measures in favor of the proposed beneficiary, in coordination with the Personalized Section of the Division of Protection of Persons and Security (DPPS), also with the Division of Special Forces (DIFEP), of the Ministry of the Interior. Regarding the complaint filed with the Public Prosecutor's Office on August 25, 2023 for a second intimidating message, the investigating body indicated that: "In the letter dated August 25, 2023, presented by Judge Irma Elizabeth Palencia Orellana, none of its points refers to the end of having received intimidating messages from the telephone number [sic]."
28. Regarding the public demonstrations in the TSE, the state report said that the presence of protesters at the TSE headquarters, the discontent shown and their expressions, would be part of the free exercise of the right to demonstrate in a democratic context. It also clarified that public demonstrations are monitored by the Human Rights Ombudsperson's Office, which is said to guarantee that there are no human rights violations, nor violent acts or incitement to them. According to the State, to date there has been no situation of aggression in any public demonstration against the justices of the TSE or the staff of that institution.
29. Regarding the publications made through social media against the proposed beneficiary, the State indicated that it could not interfere in the exercise of the freedom of expression of private citizens on digital platforms, such as social media, given that they allegedly constitute means in which people can express their opinions without any limitation. On another note, [the State] noted that no official account of state institutions had expressed any opinion on the proposed beneficiary, so it would not be attributable to them the publications of individuals that could be unpleasant to the proposed beneficiary. According to the State, to date, the proposed beneficiary has not reported any specific publication that could constitute a crime.
30. The State indicated that there are twelve ministerial folders that are allegedly related to the proposed beneficiary. Of those twelve folders, five have already been dismissed, and only seven are active. Of these seven, the proposed beneficiary appears to be denounced in five. However, these are folders in which she still enjoys the right to pre-trial proceedings and in which the Public Prosecutor's Office is not authorized to investigate her, nor has it identified the need to start investigating her. The only active folder before the Public Prosecutor's Office in which she can initiate an investigation, because the right to pre-trial proceedings has already been withdrawn from the proposed beneficiary, relates to the administrative contract for the purchase of TREP. In that matter, the crime of abuse of authority, fraud, and breach of duty would be investigated.
31. Regarding the preliminary proceedings referred to in the request, it is noted that five of them have already been rejected *in limine*. Two of them are reportedly related to other people and the other three (227-2023, 246-2023 and 255-2023) that are related to the proposed beneficiary, are still in the initial stage of analysis.<sup>8</sup> Therefore, there is purportedly only one investigation and one active preliminary trial

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<sup>8</sup> Regarding pre-trial 227-2023 and 246-2023, a first resolution is still pending, and pre-trial 255-2023 is said to be the one already indicated in relation to the TREP case.

against the proposed beneficiary. The State stressed that these ongoing processes are before jurisdictional bodies that enjoy judicial independence.

32. Regarding the constitutional protections and actions filed against the TSE, the State indicated that the constitutional jurisdiction does not represent a risk because citizens have the right to resort to it and the justices of the TSE, like any other public official, is susceptible to being a challenged authority in this type of constitutional actions. Similarly, it emphasized that it is not noted that the positive effects of any amparo resolution have led to any type of risk against the proposed beneficiary. According to the state report, in the cases that the proposed beneficiary was the person who filed the amparo action (*amparista*) and did not obtain a favorable resolution, she would not notice a risk either, given that her requests allegedly seek to stop search proceedings, which is equivalent to pretending that the constitutional jurisdiction exceeds its limits and interferes with other jurisdictions. The State recalled that the Constitutional Court has already ruled in relation to constitutional, electoral, and criminal jurisdiction, and indicated that they cannot obstruct each other. The State considered that none of the amparo actions would represent a risk or a measure of intimidation for the proposed beneficiary, given that as a justice in charge of the TSE she had to respond to constitutional requests related to the electoral process and comply with the resolutions of the bodies in defense of the constitutional order.

### III. EXCEPTIONAL CONTEXT APPLICABLE TO THIS REQUEST FOR PRECAUTIONARY MEASURES

33. In 2021 and 2022, the Commission included Guatemala in Chapter IV.B. of its Annual Report, due to the progressive weakening of the rule of law as a result of a process of gradual co-optation of the system of administration of justice by power groups interested in perpetrating impunity and corruption.<sup>9</sup> Among other facts, the IACHR observed the dismantling of anti-corruption institutions, including the dismissal of the head of the Special Prosecutor's Office against Impunity (FECI) in 2021; irregularities in the selection process of the Constitutional Court for the period 2021-2026; as well as the weakening of other units of the Public Prosecutor's Office responsible for investigating corruption and transitional justice cases, through the transfer, criminalization, or arbitrary removal of its officials and career prosecutors.<sup>10</sup> In this context, more than 30 justice operators have left the country in exile after denouncing criminal prosecution due to their jurisdictional work and because in repeated cases of criminalization preventive detention would be ordered<sup>11</sup>.
34. Moreover, and considering that this matter is related to the 2023 electoral process in Guatemala, the Commission takes up the contextual assessments identified in the *Case of Cesar Bernardo Arévalo de León and Karin Herrera Aguilar regarding Guatemala* with precautionary measures granted by Resolution 48/2023 of August 24, 2023<sup>12</sup>.
35. Regarding the TSE, the Commission observes that, on August 18, 2023, the Electoral Observation Mission of the OAS considered that the judicialization of the process undermined the character of the highest electoral authority that the Political Constitution grants to the Supreme Electoral Tribunal, whose specific legislation also has the status of constitutional law.<sup>13</sup> Similarly, the European Union Electoral Observation Mission indicated, in its report of August 22, 2023, the existence of *X/Twitter* accounts close

<sup>9</sup> IACHR. Resolution 1/2023. "Human Rights, the Instrumentalization of the Justice System and the Serious Risks for the Rule of Law in Guatemala," approved on December 10, 2023.

<sup>10</sup> *Ibidem*.

<sup>11</sup> *Ibidem*.

<sup>12</sup> IACHR. Resolution 48/2023. Precautionary Measure No. 574-23. Cesar Bernardo Arévalo de León and Karin Herrera Aguilar regarding Guatemala. August 24, 2023.

<sup>13</sup> OAS. Preliminary Report MOE. OAS Electoral Observation Mission congratulates the people of Guatemala for their civic engagement in the second round of elections. August 22, 2023, p. 28



to radical groups in Guatemala.<sup>14</sup> The Mission observed “the artificial amplification and coordination of online messages by fake accounts and bot-driven activity by malicious actors to feed campaign messages, allegations of fraud, disinformation, intimidation and subliminal threats against political opponents, as well as repeated allegations of interference against observers and international electoral organizations<sup>15</sup>.”

36. On September 1, 2023, the Permanent Council of the OAS approved the Resolution “Recent Events in Guatemala” in which it expressed concern “about the post-election actions of political actors and partisan forces, and the continuous judicialization of the process and practice of the Public Ministry to intimidate the electoral authorities, as well as the action of the General Directorate of the Registry of Citizens that provisionally suspended the registration of the constitution of the Seed Movement party.”<sup>16</sup> On September 29, 2023, the IACHR denounced the persistence of actions by the Public Ministry against the constitutional order and the independence of the public powers<sup>17</sup>, including a new raid on the headquarters of the TSE that resulted in the theft of more than 125,000 original documents and records from the general elections.<sup>18</sup>
37. On December 10, 2023, the IACHR adopted Resolution No. 03/2023 “Human Rights, the instrumentalization of the Justice System and the serious risks to the Rule of Law in Guatemala.”<sup>19</sup> On that occasion, it warned that the instrumentalization of the justice system and criminal law, since the beginning of the electoral process, has revealed the abusive exercise of power for political-electoral purposes, as well as the erosion of the system of checks and balances of the democratic rule of law due to the absence of guarantees of the Judiciary to fulfill its role of exercising a control of constitutionality and conventionality; and the complacency of the Executive Power.<sup>20</sup> In addition, it expressed its alarm at the accelerated processing of pre-trial proceedings and other severely questioned decisions taken by the Congress of the Republic at this juncture, for example, the lifting of immunity of TSE judges on November 30, 2023.<sup>21</sup> In the Resolution, the IACHR alerted the OAS Member States and the international community to an imminent rupture of the constitutional order due to the abuse of power and the instrumentalization of the constitutional function of investigation of crimes by the Public Ministry in order to invalidate the integrity and results of the electoral process and prevent the inauguration of the elected authorities in accordance with the popular will expressed in the general elections<sup>22</sup>.
38. Finally, on January 11, 2024, the TSE emphasized the importance of respecting the electoral results through the popular will expressed at the polls on June 25 and August 20, 2023<sup>23</sup>. Moreover, it also indicated that the inauguration of the elected authorities of Guatemala, scheduled for January 14 and 15, 2024, in accordance with internal regulations, is a crucial moment for democracy. On the same date, the current president of the TSE, Judge Blanca Alfaro Guerra, spoke before the information that has transpired about arrest warrants issued against justices Ranulfo Rafael Rojas Cetina, Irma Elizabeth Palencia Orellana, Gabriel Vladimir Aguilera Bolaños, and Mynor Custodio Franco Flores<sup>24</sup>.

<sup>14</sup> European Union. [Preliminary declaration of the EU EOM Guatemala, second round](#). August 22, 2023, p. 1.

<sup>15</sup> *Idem*, p.7.

<sup>16</sup> Permanent Council, Resolution. “Recent Events in Guatemala,” OEA/Ser.G, CP/DEC.80 (2446/23), September 1, 2023, p. 1.

<sup>17</sup> IACHR. Press Release No. [239/23 - Guatemala: IACHR urges the State to respect the constitutional order](#). Washington D.C., October 4, 2023.

<sup>18</sup> Public Prosecutor’s Office. [Press Release](#). September 30, 2023.

<sup>19</sup> IACHR. Resolution 1/2023. “Human Rights, the Instrumentalization of the Justice System and the Serious Risks for the Rule of Law in Guatemala,” approved on December 10, 2023.

<sup>20</sup> *Ibidem*.

<sup>21</sup> *Ibidem*.

<sup>22</sup> *Ibidem*. See also: IACHR. [Press Release No. 287. IACHR Adopts Resolution on Human Rights and Serious Risks for the Rule of Law in Guatemala](#). December 11, 2023.

<sup>23</sup> X. [Communication. TSE calls for the transition process to be carried out in an atmosphere of peace and national unity](#). January 11, 2024.

<sup>24</sup> X. [Publication of January 11, 2024](#).

#### IV. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY, AND IRREPARABLE HARM

39. The precautionary measures mechanism is part of the Commission’s function of overseeing compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States. These general functions are set forth in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the Statute of the IACHR. Moreover, the precautionary measures mechanism is enshrined in Article 25 of the Rules of Procedure. In accordance with this Article, the IACHR grants precautionary measures in urgent and serious situations in which these measures are necessary to avoid irreparable harm to persons or to the subject matter of a petition or case before the organs of the inter-American system.
40. The Inter-American Commission and the Inter-American Court of Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have established repeatedly that precautionary and provisional measures have a dual nature, both protective and precautionary.<sup>25</sup> Regarding the protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights.<sup>26</sup> To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and the vulnerability to which the persons proposed as beneficiaries would be exposed if the measures are not adopted.<sup>27</sup> Regarding their precautionary nature, these measures have the purpose of preserving legal situations while under the consideration of the IACHR. They aim to safeguard the rights at risk until the request pending before the inter-American system is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures enable the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations.<sup>28</sup> In the process of reaching a decision, according to Article 25(2) of its Rules of Procedure, the Commission considers that:
- a. “serious situation” refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the inter-American system;
  - b. “urgent situation” refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and

<sup>25</sup> See in this regard: I/A Court H.R. [Matter of the Yare I and Yare II Capital Region Penitentiary Center](#). Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. [Case of Carpio Nicolle et al. v. Guatemala](#). Provisional Measures. Order of July 6, 2009, considerandum 16.

<sup>26</sup> See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 8; I/A Court H.R. [Case of Bámaca Velásquez](#). Provisional Measures regarding Guatemala. Order of the Court of January 27, 2009, considerandum 45; I/A Court H.R. [Matter of Fernández Ortega et al.](#) Provisional Measures regarding Mexico. Order of the Court of April 30, 2009, considerandum 5; I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 [only in Spanish].

<sup>27</sup> See in this regard: I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5; I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 9; I/A Court H.R. [Matter of the Criminal Institute of Plácido de Sá Carvalho](#). Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of February 13, 2017, considerandum 6 [in Spanish].

<sup>28</sup> See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 7; I/A Court H.R. [Matter of “El Nacional” and “Así es la Noticia” Newspapers](#). Provisional Measures regarding Venezuela. Order of the Court of November 25, 2008, considerandum 23; I/A Court H.R. [Matter of Luis Uzcátegui](#). Provisional Measures regarding Venezuela. Order of the Court of January 27, 2009, considerandum 19.

- c. “irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.
41. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt. The information provided should be assessed from a *prima facie*<sup>29</sup> standard of review to determine whether a serious and urgent situation exists. Similarly, the Commission recalls that, by its own mandate, it is not called upon to make a determination on any individual criminal liabilities for the facts alleged. Moreover, in this proceeding, it is not appropriate to rule on violations of rights enshrined in the American Convention or other applicable instruments.<sup>30</sup> This is better suited to be addressed by the Petition and Case system. The analysis performed herein is exclusively related to the requirements set forth in Article 25 of the Rules of Procedure, which can be resolved without making any determinations on the merits.<sup>31</sup>
42. The Commission notes that the applicant has challenged the decisions of various State officials and bodies. In this regard, the Commission notes that judges of the Judiciary, officials of the FECCI, the Public Ministry of Guatemala, among others, have been questioned. However, considering the nature of the allegations made, the Commission understands that they necessarily require an assessment on the merits that exceeds the procedure of precautionary measures.<sup>32</sup> If such allegations are raised within the framework of a petition or case, the Commission may evaluate them in light of the American Convention and the applicable standards, should the requirements for it be given.
43. In analyzing the procedural requirements, Article 25(6) of its Rules of Procedure establishes that the Commission “shall take into account” the context of the request. In this sense, the Commission emphasizes that the situation of Ms. Irma Palencia, then president of the TSE during the electoral period of 2023, is framed in an exceptional context characterized by the instrumentalization of the Justice System and serious risks for the Rule of Law. The Commission notes that other bodies of the OAS and Electoral Missions have expressed the same opinion. In this context, the Commission notes that the TSE has been the subject of various actions against it with a view to invalidating the results of the electoral process. Such actions against the TSE have been materializing particularly in its judges, as was assessed by the IACHR in December 2023. In the case of the proposed beneficiary, the Commission understands that her situation is especially differentiated, since it was she who led the Supreme Court during the 2023 electoral period and promoted actions to defend its institutionality, as well as the integrity of the electoral process. Moreover, the Commission takes into account in its assessment that the proposed beneficiary is part of the group of judges of the TSE who had their immunity lifted in a context of complaints that seek to question the electoral process and its results.

<sup>29</sup> See in this regard: I/A Court H.R. Matter of Members of the Miskitu Indigenous Peoples of the North Caribbean Coast regarding Nicaragua. Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23, 2018, considerandum 13 [only in Spanish]; I/A Court H.R. Matter of Children Deprived of Liberty in the “Complexo do Tatuapé” of the Fundação CASA. Request for extension of provisional measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006, considerandum 23.

<sup>30</sup> IACHR. Resolution 2/2015. Precautionary Measure No. 455-13. Matter of Nestora Salgado regarding Mexico. January 28, 2015, para. 14; IACHR. Resolution 37/2021. Precautionary Measure No. 96/21. Gustavo Adolfo Mendoza Beteta and family regarding Nicaragua. April 30, 2021, para. 33.

<sup>31</sup> In this regard, the Court has indicated that “[it] cannot, in a provisional measure, consider the merits of any arguments pertaining to issues other than those which relate strictly to the extreme gravity and urgency and the necessity to avoid irreparable damage to persons.” See in this regard: I/A Court H.R. Matter of James et al. regarding Trinidad and Tobago. Provisional Measures. Order of the Inter-American Court of Human Rights of August 29, 1998, considerandum 6; I/A Court H.R. Case of Barrios Family v. Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of April 22, 2021, considerandum 2 [in Spanish].

<sup>32</sup> IACHR, Resolution 48/2023, PM-574-23. Matter of Cesar Bernardo Arévalo de León and Karin Herrera Aguilar regarding Guatemala. August 24, 2023.

44. With respect to the requirement of *seriousness*, the Commission considers that it has been met. At the time of making this assessment, the Commission understands that the proposed beneficiary serves as a judge of the TSE and, between August 14, 2022, and October 26, 2023, it was her responsibility to assume the Presidency of the said Court, which purportedly places her in a different and unique condition than that of the other judges of the TSE in the aforementioned context, after having taken actions in favor of the integrity of the electoral process.
45. As reported by the applicant, the Commission notes that the situation of the proposed beneficiary is composed of a series of intimidations, stigmatizations, death threats, surveillance, and follow-ups, accompanied by a context of coordinated behaviors on social networks against her (through the so-called “netcenters”). In particular, the Commission highlights the following facts:
- social media posts about her personal and family life labeled as part of the systematic harassment against her; smear campaigns both on social media and in the digital media accusing her of being responsible for fraud and treason;
  - since January 2023 to date, threatening messages have been circulating against her, even inciting to burn the TSE facilities and “burn alive” the justices;
  - in February 2023, during public demonstrations, a group of people allegedly threatened to “take de facto measures” to the detriment of the TSE justices, as well as “burn the TSE facilities”, having to evacuate the personnel of the aforementioned facilities;
  - threats through text messages against the proposed beneficiary and her family between July and August 2023, indicating, among others, “(..) take care of your motherfucker family in time to change your decisions”, “Because it can come out it affects your family”, “(...) we are aware of everything you are doing and that if the fraud is carried out we are going to take action on the matter, we are going to shit on your family, we are going to shit on you, so take into account this notice you heard”;
  - surveillance and social media posts about the proposed beneficiary’s location when she is in public places; in 2023, motorcycle tracking was conducted when she was commuting from work to her residence; and
  - in October 2023, she was followed by a vehicle with hidden license plates after leaving the Court parking lot.
46. When assessing all the situations as a whole, and under the context verified by the IACHR and by various international bodies, there is an accelerated increase and aggravation of her security situation over time, given the intensification of the incidents against her life and personal integrity. In the same vein, the Inter-American Court indicated, in the *matter of Salas Arenas et al. regarding Peru*, referring to the situation of the president of the National Jury of Elections of Peru, that certain facts, such as harassment in public or demonstrations with aggressive speeches in the workplace or residence, constitute a considerable risk and should be understood as imminent threats.<sup>33</sup> In the opinion of the Inter-American Court, these events put the lives and personal integrity of the persons subject to them at risk, in addition to generating intimidation, anguish, and fear.<sup>34</sup> Similarly, for the Inter-American Court, the conjunction

<sup>33</sup> I/A Court H.R., Matter of Jorge Luis Salas Arenas and his family unit regarding Peru. Order of the Inter-American Court of Human Rights of September 4, 2023, considerandum 62.

<sup>34</sup> *Ibidem*.

of recurrent negative mentions on social media and harassment, threatening calls, and harangues in public speeches should be understood as direct threats to the personal integrity of the person<sup>35</sup>.

47. Regarding the alleged intimidating and threatening messages, as well as stigmatizing publications on social media and “*netcenters*,” the Commission understands that they are part of a context of strong campaigns on social media, including violent messages for those threatened, which could be related to radical groups. The Commission recognizes that, as a public official and representative of a high state body, the proposed beneficiary has exposed herself to public scrutiny and, in that sense, the right to freedom of expression protects even critical or disturbing speech on the part of the citizens, who have the legitimate right ab initio to issue opinions as long as they do not incur speeches not protected by Article 13(5) of the ACHR. Therefore, the Inter-American Court, in evaluating the granting of provisional measures in the *cases of Bámaca Velásquez, Maritza Urrutia, Sánchez Plan Massacre, Chitay Nech et al., Río Negro Massacres, and Gudiel Álvarez et al. (“Military Diary”) Vs. Guatemala*, stressed that certain messages on social media that can be considered harassment, along with other elements, cannot be analyzed in isolation, but must be considered “as a whole<sup>36</sup>.”
48. In the same vein as indicated in the *Matter of José Domingo Pérez Gómez and his nuclear family regarding Peru*, and in view of the arguments referring to the publication and disclosure of messages with personal, family, and daily information of the proposed beneficiary, the Commission considers that the exercise of criticism of a public officer should not be confused with expressions that do not have the same level of inter-American protection, such as the disclosure of personal information for intimidating purposes and other actions included under the practice of *doxing*, or with the issuance of threats through social media.<sup>37</sup> *Doxing* and threats can involve severe self-censorship effects that inhibit the exercise of freedom of expression and hurt public debate. Moreover, the Commission underlines that the so-called “*netcenters*,” do not necessarily reflect a debate of a citizen and democratic environment. Therefore, it is necessary to differentiate, in applicable cases, between the exercise of citizen criticism and the deliberate action of escalating harmful positions to people by implementing inauthentic or inorganic and coordinated behaviors. Faced with the foregoing, the Commission emphasizes that the negative effects of coordinated behaviors on social media that appeal to intimidation, discredit, harassment, and threats against justice operators can, and sometimes must, be countered in the public debate with institutional messages of protection and support, which must be added to the timely deployment of mechanisms for protection and investigation of the rule of law to the affected person or public official.
49. The Commission takes note of the response of the State of Guatemala and appreciates that protection measures have been implemented in favor of the proposed beneficiary. Likewise, it takes note of the state of the investigations and judicial processes, of various nature, both those filed against the proposed beneficiary and those in which she presents herself as a plaintiff.
50. The Commission notes that the State has recently carried out two risk assessments, on May 10 and October 2, 2023, in which its risk was concluded as “medium” derived from the functions it exercised, as president of the TSE. After such risk assessments, the implementation of a protection detail in her favor was purportedly determined. In particular, on October 2, 2023, an increase with additional agents was recommended. Notwithstanding, the Commission notes that, according to the applicant, such measures are not being implemented adequately, in accordance with his situation and level of risk, and particularly,

<sup>35</sup> *Ibidem*.

<sup>36</sup> I/A Court H.R. Cases of Bámaca Velásquez, Maritza Urrutia, Sánchez Plan Massacre, Chitay Nech et al., Río Negro Massacres, and Gudiel Álvarez et al. (“Military Diary”) Vs. Guatemala. Provisional Measures and Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 22, 2022, considerandum 35.

<sup>37</sup> IACHR. Resolution 64/2023. Precautionary Measure No. 576-21. José Domingo Pérez and his nuclear family regarding Peru (Follow-up and Extension). November 8, 2023, paragraph 799.

in the current context. In this regard, it was alleged that during the implementation of her security detail, it has undergone changes that have resulted in its weakening. For example, in May 2023, the person in charge of her personal security reportedly resigned and in September, one of the agents behaved inappropriately and then was fired, all during the election period. The two missing agents were replaced until October and three of the security agents were on vacation. The Commission notes that the proposed beneficiary reported that she did not have a communication with the external authority in charge of the detail.

51. In this vein, the Commission observes that, despite the previous situation, it is not evidenced that the corrections corresponding to the security detail have been made, especially regarding the absence of police officers and after learning of the events against the proposed beneficiary. In this regard, the Commission considers it important to have a reassessment of the level of risk to assess the efficiency of the measures implemented, as well as to assess the need to make the respective readjustments to the current security detail in order to ensure the effective mitigation of the alleged threatening situation. This is due to the fact that several of the reported incidents led to casualties in the protection measures during the period and that they continued after the reinforcement of the security detail. Similarly, to have spaces for coordination and communication between the proposed beneficiary and the competent authorities, in order to manage such adjustments and corrections as appropriate.
52. Regarding the filing of complaints, the Commission notes that the proposed beneficiary has informed the respective authorities, including the Public Ministry. For example, in August 2023, the proposed beneficiary filed complaints with the Public Ministry regarding threats and intimidation against her and her family. Furthermore, the proposed beneficiary's own police security has been reporting her security situation internally. For example, in October 2023, the said security informed the proposed beneficiary about the follow-up acts that have been subject to. Along the same lines, the Commission notes that the State itself indicated that, in view of the facts alleged by the proposed beneficiary, the increase in protection measures was warranted. The Commission considers it pertinent to point out, in the same line as that indicated by the Inter-American Court, that "for this Court it is inappropriate to require that a justice operator have to file criminal complaints about intimidating acts or threats so that it is appropriate to provide protection, in the face of fears related to the exercise of their work [...]"<sup>38</sup> to their rights, or in this case, to adopt the corresponding measures that are necessary.
53. The Commission appreciates the information provided by the state authorities regarding the efforts aimed at promoting investigations into the threats received by telephone and text messaging to the detriment of the proposed beneficiary and her family. Notwithstanding, the Commission notes that the state report does not contain specific information on whether investigation processes have been initiated related to the other threatening events reported by the proposed beneficiary in this request (e.g., follow-ups, intimidating messages, threatening publications on social media). This considering that they are known to the state authorities. In this regard, the Commission recalls the importance of conducting relevant research in order to mitigate the reported risk factors and prevent their recurrence over time.<sup>39</sup> It also notes that the lack of progress in the investigative procedures causes a context of impunity that allows for an ongoing threatening situation, which places the proposed beneficiary in a situation of greater vulnerability. Along the same lines, the Court has determined that the State's obligation to investigate must be diligently complied with to avoid impunity and that the events occur again.<sup>40</sup> In this

<sup>38</sup> I/A Court H.R. Cases of Bámaca Velásquez, Maritza Urrutia, Sánchez Plan Massacre, Chitay Nech et al., Río Negro Massacres, and Gudiel Álvarez et al. ("Military Diary") Vs. Guatemala. Provisional Measures and Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 22, 2022, considerandum 24.

<sup>39</sup> The IACHR has pointed out that "impunity encourages the repetition of human rights violations." I/A Court H.R. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 100.

<sup>40</sup> I/A Court H.R., Case of González et al. ("Campo Algodonero") Vs Mexico, Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 289.

regard, the Court also recalls that once the state authorities become aware of the fact, they must initiate *ex officio* and without delay, a serious, impartial, and effective investigation by all available legal means and aimed at determining the truth and the persecution, capture, prosecution and eventual punishment of all the perpetrators, especially when state agents are or may be involved.

54. With regard to the complaints formalized against the proposed beneficiary, and in light of the Guatemalan context also taken into account by the Inter-American Court for justice operators, the Commission understands, in accordance with the *Provisional Measures and Supervision of Compliance with Judgment of the Case of Gudiel Álvarez et al. ("Military Journal") Vs. Guatemala*, that the pattern of complaints in the specific case may be an indicator of the intention to intimidate the justice operator,<sup>41</sup> in this case of a sitting justice and then president of the TSE. In this regard, the Inter-American Court indicated that, in order to distinguish their merit or not, the State must take into account the context and seek to see as a whole the complaints filed against the judge in a timely manner.<sup>42</sup> Given the situation under analysis, and based on the information available, the Commission recalls that the exceptional context in Guatemala has been assessed internally by the competent authorities. The previous assessment is in line with those made by various organs of the OAS regarding the behavior of the Public Ministry against the justices of the TSE, particularly, of the proposed beneficiary.
55. Considering all the previous assessments, the Commission points out that there is a pattern of actions and facts reported in the instant matter, which, observed in light of the exceptional context faced by Guatemala, reflect a series of coordinated actions against the proposed beneficiary with a view to her not being able to properly carry out her duties as a sitting justice of the TSE, after having presided over the said institution during the general elections of 2023. This not only impacts the proposed beneficiary, but also the current and future judges of the TSE, given the intimidating effect that is generated.
56. The Commission therefore understands that, given the situation of the proposed beneficiary, she has decided to request vacation leave and leave the country. Considering that she continues to be a judge of the TSE, and given her upcoming return to the country, the Commission recalls that, although the mechanisms of material protection aimed at protecting against threatening situations are important, it is necessary to take into account a comprehensive and preventive approach. Thus, not only should threats, attacks, and reprisals be prevented, but their causes must also be addressed.<sup>43</sup> In reference to this, the Court has recalled that States have a particular duty to protect justice operators,<sup>43</sup> which includes granting effective and adequate guarantees for them to freely carry out their activities, as well as providing protection measures that are consistent with the functions they perform, avoiding actions that limit or hinder their work.<sup>44</sup>
57. Consequently, the Commission notes that, according to the information available, the situation placing the proposed beneficiary at risk has remained over time and has increased in recent months. Given the ongoing and persistent risk factors, the lack of implementation of adequate and sufficient protection measures, and the need to promote the investigation of the reported threatening events, in light of the context assessed by the IACHR, this Commission observes that Ms. Palencia Orellana's situation makes it possible to estimate that her rights to life and integrity are *prima facie* in a serious situation.

<sup>41</sup> I/A Court H.R. Case of Gudiel Álvarez et al. ("Military Diary") v. Guatemala. Provisional Measures and Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 9, 2022. Considerandum 35

<sup>42</sup> *Ibidem*.

<sup>43</sup> IACHR. Towards Effective Integral Protection Policies for Human Rights Defenders. OEA/Ser.L/V/II., Doc. 207/17, December 29, 2017, para. 30.

<sup>44</sup> Case of Ruiz Fuentes et al. v. Guatemala. Request for Provisional Measures and Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 2, 2020, Considerandums 39 and 40, and Case of Gudiel Álvarez et al. ("Military Diary") v. Guatemala. Provisional Measures and Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 9, 2022, Considerandum 31

58. In relation to the *requirement of urgency*, the Commission notes that the fact that the risk sources for the proposed beneficiary remain at present and are connected with the events she has been facing, shows that her situation requires the immediate intervention of the State. In view of the foregoing, the situation placing her at risk is likely to continue to worsen, particularly in the context of her performance as a sitting judge of the Supreme Court. This, insofar as the reported facts persist coupled with the alleged lack of adequate implementation of protection measures and the lack of investigation into the incidents that occurred against her, and the assessments of the exceptional context faced by Guatemala. For the Commission, it is urgent to adopt immediate measures to safeguard the life and personal integrity of the proposed beneficiary.
59. Regarding the *requirement of irreparable harm*, the Commission considers that it is met, given that the possible impact on the rights to life and personal integrity constitutes the maximum situation of irreparability.
60. In relation to the arguments of the State regarding the principle of complementarity, the Commission recalls that, in effect, the State, through its domestic authorities, is primarily responsible for protecting the human rights of the persons under its jurisdiction; in this regard, the nature of international jurisdiction is “auxiliary” or “complementary,” without replacing it. The Commission notes, however, that invoking the principle of complementarity to support that the adoption of precautionary measures is unwarranted requires that the State concerned satisfy the burden of proving that the proposed beneficiaries are no longer in a serious and urgent situation pursuant to Article 25 of the Rules of Procedure. This, in the sense that the measures adopted by the State have had a substantive impact in reducing or mitigating the risk, so that compliance with the procedural requirements is no longer fulfilled and therefore international intervention to prevent irreparable harm is required.

#### **V. BENEFICIARY**

61. The Commission declares Irma Elizabeth Palencia Orellana, who is duly identified in these proceedings, the beneficiary of the precautionary measures .

#### **VI. DECISION**

62. The Inter-American Commission considers that this matter meets, *prima facie*, the requirements of seriousness, urgency, and irreparable harm set forth in Article 25 of its Rules of Procedure. Consequently, it requests that Guatemala:

- a) adopt the necessary measures to guarantee the rights to life and personal integrity of Irma Elizabeth Palencia Orellana;
- b) take the necessary measures to ensure that Irma Elizabeth Palencia Orellana can continue to perform her duties as a sitting justice of the Supreme Electoral Tribunal of Guatemala without being subjected to threats, intimidation, harassment, or acts of violence;
- c) consult and agree upon the measures to be implemented with the beneficiary and her representatives; and
- d) report on the actions taken to investigate the alleged events that led to the adoption of this resolution, so as to prevent such events from reoccurring.



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63. The Commission also requests that the State of Guatemala report, within 15 days as from the day after this resolution, on the adoption of the required precautionary measures and to update that information periodically.

64. The Commission emphasizes that, in accordance with Article 25(8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute a prejudgment on any violation of the rights protected under the applicable instruments.

65. The Commission instructs its Executive Secretariat to notify this Resolution to the State of Guatemala and the applicants.

66. Approved on January 13, 2024, by Roberta Clarke, President; Carlos Bernal Pulido, Second Vice-President; José Luis Caballero Ochoa; Arif Bulkan; Andrea Pochak; and Gloria Monique de Mees, members of the IACHR.

Tania Reneaum Panszi  
Executive Secretary