

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 13/2021**

Precautionary Measure No. 240-15

José Fernando Choto Choto *et al.* regarding El Salvador

February 4, 2021

Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in view of the fact that progress has been reported in the investigations to clarify the events that led to the disappearance of three beneficiaries and a special commission has been created at the domestic level with the exclusive purpose of finding their whereabouts. The activities of this commission are monitored by the Constitutional Section of the Supreme Court of El Salvador. In that sense, following the Inter-American Court, the IACHR understands that at this time it is appropriate to analyze the allegations of alleged violations of the American Convention, as well as the applicable instruments, within the framework of P-1206-17 if the applicable regulatory premises are present. Similarly, with regard to the identified relatives of the beneficiaries, the IACHR was informed that they have left the country and are in the United States under "asylum status."

II. BACKGROUND

2. On September 28, 2015, the IACHR adopted precautionary measures in favor of José Fernando Choto Choto, Oscar Oswaldo Leiva Mejía, Francisco Javier Hernández Gómez, as well as their next of kin. According to the request, the beneficiaries have allegedly disappeared after having been detained by the armed forces on February 18, 2014. As a direct consequence of the complaints filed for the alleged events, it was alleged that his next of kin were at risk.

3. After analyzing the allegations of fact and law presented by the parties, the Commission considered that the information showed *prima facie* that José Fernando Choto Choto, Oscar Oswaldo Leiva Mejía, Francisco Javier Hernández Gómez, as well as their next of kin, are in a serious and urgent situation since their lives and personal integrity are at risk. Consequently, as provided in Article 25 of the IACHR Rules of Procedure, the Commission requested that El Salvador adopt the necessary measures to determine the whereabouts of Oscar Oswaldo Leiva Mejía, Francisco Javier Hernández Gómez, and José Fernando Choto Choto, in order to protect their lives and personal integrity. In the same way, it requested that the State adopt the necessary measures to preserve the life and personal integrity of the family nucleus of the allegedly disappeared persons. Finally, it asked that the State arrange measures to be adopted with the beneficiaries and their representatives regarding the specific protection measures and report on the actions taken to investigate the alleged facts that led to this precautionary measure being granted and, thus, avoid its repetition¹.

III. SUMMARY OF THE INFORMATION PROVIDED WHILE THE PRECAUTIONARY MEASURES WERE IN FORCE

¹ IACHR, PM 240-15. José Fernando Choto Choto et al., El Salvador, September 28, 2015. Available (in Spanish) at: <http://www.oas.org/es/cidh/decisiones/pdf/2015/mc240-15-es.pdf>

4. After the precautionary measures were granted, the IACHR continued to monitor the situation by requesting information from the parties.

5. The State provided a response on February 9, 2016, which was then forwarded to the representation on July 5, 2016. The representation provided its comments on July 25, 2016. Said response was forwarded to the State on December 13, 2016. The representation submitted additional information on June 30, 2017. The IACHR requested additional information from the State on October 19, 2020, and a response was provided on November 19, 2020. At the time, the State requested that the present precautionary measures be "archived". Upon asking the representatives for their observations on December 10, 2020, the IACHR received their response on January 7, 2021.²

A. State Information

6. On February 9, 2016, the State reported that it had summoned the competent domestic institutions and the representatives of the beneficiaries to take part in a meeting in order to coordinate the activation of the corresponding authorities of protection. Said meeting was held in the presence of officials from the Foreign Ministry, the Ministry of Justice and Public Security, the National Civil Police, and representatives of the Salvadoran Association for Human Rights (ASDEHU). They discussed aspects related to the investigations undertaken by the judicial and administrative authorities as well as the implementation of the precautionary measures ordered by the Constitutional Division of the Supreme Court of Justice.

7. On that date, the State reported that the Constitutional Division had been processing the constitutional process of *Habeas Corpus 40-2015* in favor of Messrs. Oswaldo Leiva Mejía, Francisco Javier Hernández Gómez, and José Fernando Choto Choto in the face of the alleged irregular actions of the Ministry of National Defense and the Chief of the Joint Chiefs of Staff of the Armed Forces, alleged to be responsible for the deprivation of liberty and forced disappearance of the aforementioned persons. The State provided the specifics of all the procedural actions in said constitutional process. In this regard, it was noted that on June 24, 2015, the Constitutional Division ordered the Executive Technical Unit of the Justice Sector to implement urgent protection measures in favor of the witnesses of the case.

8. In compliance with the provisions of the Constitutional Division of the Supreme Court, the Victim and Witness Protection Program carried out a risk assessment of each of the beneficiaries of the protection measures on July 9, 2015. They were offered personal security, which they purportedly rejected on the grounds that said measure would draw attention to them and claiming that this security would be temporary and cumbersome for any attempts to lead a normal life. The State reported that it granted the following "ordinary protection measures" based on the Special Law for the Protection of Victims and Witnesses:

- That the transfer of the protected person to the court where the sentencing hearing is held be carried out in a coordinated effort between the Unit for Crimes Relating to Life and Physical Integrity of the Attorney General's Office, the District Attorney of Sonsonate and the Executive Technical Unit of the Justice Sector.
- That a private and guarded place be provided while the protected person is in the places where the procedure is being carried out.
- That the protected person be able to testify in non-formal, non-hostile environments, and that their testimony be recorded by audiovisual means to facilitate its reproduction in public hearing when necessary or in case the person is unable to appear.

² The beneficiary's representatives submitted their response to the IACHR in the framework of Petition 1206-17 and not in the file of the present precautionary measures.

- That the protected person is kept from being photographed or their image captured by any other means.
- That it be forbidden for any person to disclose information that could enable others to identify the protected person.
- That the protected person, at the time of appearing for a public hearing, is able to do so with a screen in order not to be directly exposed to the accused.

9. In addition, "extraordinary measures" were offered in accordance with the Special Law for the Protection of Victims and Witnesses. Said measures included an offer to temporarily move the beneficiaries to the safe house of the Program, including daily meals, personal hygiene items, and medical care. The beneficiaries did not accept such protection measures. The State explained that such measures may be applied if the circumstances are appropriate and the beneficiaries require them.

10. The State referred to the investigation opened for the crime of threats against Mrs. María Yolanda Mejía de Hernández, Pedro Antonio Leiva et al. The aforementioned did not want the application of the protection regime in their favor within the framework of the Special Law for the Protection of Victims and Witnesses. Moreover, within the framework of the investigation into the forced disappearance and deprivation of liberty by a public officer or employee, agent of authority or public authority to the detriment of Oscar Oswaldo Leiva, Francisco Javier Hernández and José Fernando Choto Choto, the State reported that protection measures were granted in favor of: Gloria Esperanza Choto de Castillo, María Francisca Gómez, widow of Ramos, José Amílcar Choto Pleitez and their children Marlon Natanael Choto Salazar, José Amílcar Choto Salazar, Carlos Amílcar Choto Choto, Kenia Alexandra Choto Choto and Emilie Raquel Choto Salazar, as well as in favor of Fredy Mauricio Villalobos Castillo, María Yolanda Mejía de Hernández and Pedro Antonio Leiva. The State explained in detail the proceedings in the framework of said investigation, and an acquittal was issued in favor of the accused soldiers. This decision was appealed.

11. The State explained the actions taken by the Ministry of National Defense, opening an administrative inquiry. Furthermore, the officers involved were referred to the ordinary courts. In the case of the Office of the Attorney for the Defense of Human Rights, the State declared that they issued precautionary measures in favor of Mr. José Amílcar Choto Pleitez and his family, which were directed to the Commander of Military Unit number six and the Chief of the Delegation of the National Civil Police in Sonsonate. The Attorney General's Office warned that, during the corresponding investigation, elements were obtained which allegedly suggest an arbitrary procedure was made by the military personnel involved, which would imply a violation to the right to life, personal liberty and integrity due to the forced disappearance of Messrs. José Fernando Choto Choto, Oscar Oswaldo Leiva Mejía and Francisco Javier Hernández Gómez. Furthermore, the Attorney General's Office declared that there was a violation of the rights of their next of kin due to the deep suffering caused by the disappearances. Regarding the decision of acquittal for the military personnel, the Office of the Attorney General stated that there is an alleged violation of due process.

12. Subsequently, in November, 2020, the State reported that the Ministry of National Defense carried out a series of actions aimed at collaborating with the investigations carried out for the disappearance of José Fernando Choto Choto, Francisco Javier Hernández Gómez and Óscar Oswaldo Leiva Mejía. On this subject, the Ministry of National Defense pushed a disciplinary sanction for the military personnel identified as responsible for the disappearances of the aforementioned young people, also referring them to the ordinary justice for the corresponding criminal investigation. Within the framework of this collaboration, the Ministry responded to the various requests for information made by the Departmental Delegation of the Procurator for the Defense of Human Rights in Sonsonate, the Office of the Attorney

General of the Republic in Sonsonate, and the Constitutional Division of the Supreme Court of Justice in the completion of the aforementioned process of *Habeas Corpus 40-2015*.

13. In the scope of criminal justice, the State reiterated that the Attorney General's Office opened a case file for the crime of Forced Disappearance of Person and Deprivation of Liberty by Public Official or Employee, Agent of Authority or Public Authority to the detriment of José Fernando Choto Choto, Francisco Javier Hernández Gómez and Óscar Oswaldo Leiva Mejía. Moreover, in the exercise of the functional management of the crime, the Office of the Attorney General of the Republic, in collaboration with the National Civil Police, carried out investigation procedures in order to determine the whereabouts of the disappeared young people, including interviews with relatives of the victims and witnesses, mapping of the municipality of Armenia, inspection of the crime scene and drawing up a location sketch, formulation of a photographic album of the places where the victims were, recognition of the suspects by photography, preparation of investigation records, inspection and search of the victims based on information and sites mentioned by witnesses, as well as the preparation of a GPS survey record. All of these supported the criminal accusation against the military personnel held responsible.

14. The foregoing, according to the State, allowed the prosecution to lead the case accordingly and take the criminal accusation to the public hearing stage, where the Court of Sonsonate issued an acquittal in favor of the defendants which was appealed by the prosecution on November 30, 2015, before the Chamber of the Second Section of Sonsonate, which confirmed the acquittal. On April 26, 2016, the prosecution presented a cassation appeal before the Criminal Division of the Supreme Court of Justice, which enabled the cassation of the acquittal resolution and ordered the Criminal Division of the First Section West based in Santa Ana to review the actions determined by the Court of Sonsonate. After the review, the Criminal Division of the First Section West of Santa Ana declared the public hearing void and ordered that it be held at the Court of Sonsonate once more, under a different judge.

15. According to the information received by the Supreme Court of Justice, the Court of Sonsonate issued a new judgment on December 21, 2018, whereby it declared the accused to be guilty for the crime of forced disappearance of persons, pursuant to Article 364 of the Criminal Code. Santos Manuel Coreto Ramírez, in his capacity as direct author, was sentenced with prison for eight years and four months, while Ronald Alberto Rodríguez Pozo, Juan Ovidio Santiago García, and José Alexander Santamaría Constante, Manuel de Jesús Santos Sánchez and Arely Elizabeth Esquina de Ramos, as necessary accomplices, were sentenced with prison for four years and four months. Both the private legal defense of the accused and the legal representatives of the victims filed an appeal against the sentence. Therefore, the process remains ongoing.

16. Regarding the search for the beneficiaries, the State reported that, in the framework of the follow-up for the process of *Habeas Corpus 40-2015*, the Office of the Attorney General of the Republic created a special commission whose only purpose is to determine the whereabouts of José Fernando Choto Choto, Francisco Javier Hernández Gómez and Óscar Oswaldo Leiva Mejía. This commission is made up of Investigation Units of the National Civil Police (PNC): from the municipality of Lourdes Colón, department of La Libertad and the municipality of Armenia, department of Sonsonate; as well as by the Police Intelligence Division (DIP) of the municipality of Sonsonate, and the Elite Division Against Organized Crime (DECO). These are all under functional management of the District Attorney of Sonsonate. This Commission conducts frequent meetings to discuss progress and follow-up information for the case, establish procedures to be carried out such as search for witnesses, raids, searches on land with PNC canine teams, interviews of witnesses in prisons, and other investigation procedures. This Commission is also responsible of providing periodic reports on their progress, which they provide to the Constitutional

Division of the Supreme Court of Justice every 5 months according to the framework of supervision of compliance with the judgment issued in the *Habeas Corpus* process specified above.

17. With regard to the protection measures in favor of relatives of the disappeared persons, the Office of the Attorney General of the Republic decided to take measures within the framework of the Regime for the Protection of Victims and Witnesses. However, the relatives left the country and notified the prosecutor by electronic means that they had taken right of asylum status in the United States of America. The State stated that, according to records, Mrs. María Yolanda Mejía Hernández and Pedro Antonio Leyva reside in New York City; Mrs. María Francisca Gómez, widow of Ramos resides in the state of Oregon, Mrs. Gloria Esperanza Choto, José Amílcar Choto Pleitéz and their family nucleus reside in the state of California. In this regard, the State pointed out that since the beneficiaries are in the process of applying for asylum status before the United States, El Salvador allegedly does not have any intervention or contact with them and is therefore physically unable to implement any measure in their favor, unless their return to the national territory can be successfully arranged.

B. Information by the representatives

18. In July 2016, the representatives confirmed that certain protection measures were not accepted by the beneficiaries. The representatives questioned the investigations and considered that there were violations of the Convention. It was also stated that, by that date, the Constitutional Division had not produced a “definitive” solution for the disappearance. The representatives also reported that the relatives of the disappeared persons “have decided to leave the country as they did not find adequate protection in El Salvador.” They provided specifics on how relatives of the three disappeared persons left El Salvador, while some others remained in the country.

19. The representatives also questioned the actions taken by the Ministry of Defense considering that, by not identifying irregularities, impunity would be favored. The representatives considered that there are sufficient elements to consider that the crime of forced disappearance has been committed. Thus, they requested that justice be made for their next of kin. In June 2017, the representatives presented a letter with specifics on how several rights recognized in the Convention had been violated.

20. After having requested additional information in 2020, as well as their observations on the State's request that the matter be “archived”, in January 2021, the representatives reiterated their previous allegations and requested a statement to denounce that El Salvador has violated certain rights of the Convention for lack of justice.³ They further indicated that although the families are out of the country, the legal representatives are in El Salvador.

IV. ANALYSIS OF THE REQUIREMENTS OF URGENCY, SERIOUSNESS AND IRREPARABLE HARM

21. The precautionary measures mechanism is part of the Commission's function of overseeing compliance with human rights obligations established in the Charter of the Organization of the American States and, in the case of Member States that have not yet ratified the American Convention, in the Declaration of the Rights and Duties of Man. These general oversight functions are set forth in Article 18 of the Statute of the Commission, while the precautionary measures mechanism is described in Article 25 of the Commission's Rules of Procedure. In accordance with that Article, the Commission grants

³ For example, they indicated that their representation has not participated in the corresponding proceedings nor have they been contacted. No specific dates or events were provided.

precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm to persons.

22. The Inter-American Commission and the Inter-American Court on Human Rights have established repeatedly that precautionary and provisional measures have a dual nature, both protective and precautionary. Regarding their protective nature, these measures seek to avoid irreparable harm and preserve human rights. Regarding their precautionary nature, the measures have the purpose of preserving legal situations that are under the consideration of the IACHR. Regarding the process of decision making and, according to Article 25.2 of the 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” is determined from the information provided and refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c) “irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

23. Concerning the foregoing, Article 25.7 of the Commission's Rules of Procedure establishes that “the decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions.” Article 25.9 establishes that “the Commission shall evaluate periodically, at its own initiative or at the request of either party, whether to maintain, modify or lift the precautionary measures in force.” In this regard, the Commission must assess whether the seriousness and urgency of the situation and the irreparable harm potentially coming to fruition, which gave rise to the adoption of precautionary measures, continue to exist. It must also consider whether new situations that may comply with the requirements set forth in Article 25 of the Rules of Procedure appear in the future.

24. In a similar manner, the Commission reminds that while the appreciation of the regulations at the time of deciding whether precautionary measures are necessary is done from a *prima facie* standard, keeping them in force requires a much more thorough evaluation⁴. In this matter, the burden of proof and arguments increases as time passes without appearance of imminent risk⁵. The Inter-American Court has stated that the passage of a reasonable period of time without any threats or intimidation, as well as the lack of imminent risk, may lead to the decision to lift international protection measures⁶.

25. In this matter, the Commission notes that the State has requested that these precautionary measures be “archived”. However, as such process does not exist in the terms of Article 25 of the Rules of Procedure, the IACHR will analyze the request as if it were a request to lift these measures. This, insofar as it is understood that the State seeks to revoke these precautionary measures. Additionally, the Commission reiterates that when a State requests the lifting of a precautionary measure, it must produce evidence and arguments sufficient to support its request⁷. In the same way, the beneficiaries’ representatives who want the measures to remain in force must present proof of any reasons for that end⁸. Similarly, subsection 11 of Article 25 of the Rules of Procedure establishes that the Commission may lift or review a precautionary measure when the beneficiaries or their representatives unjustifiably

⁴ I/A Court H.R. Provisional measures regarding Mexico. Order of February 7, 2017, para. 16 and 17. Available (in Spanish) at http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf

⁵ Ibidem

⁶ Ibidem

⁷ Ibidem

⁸ Ibidem

refrain from providing a satisfactory response to the Commission on the requirements established by the State for its implementation.

26. In this matter, the IACHR reiterates that the precautionary measures were granted in 2015 in favor of two groups of beneficiaries. First in favor of Oscar Oswaldo Leiva Mejía, Francisco Javier Hernández Gómez and José Fernando Choto Choto with the objective that the State "adopt the necessary measures to determine [their] whereabouts [and] protect their lives and personal integrity." And second, in favor of María Yolanda Mejía de Hernández, Pedro Antonio Leyva, María Francisca Gómez, widow of Ramos, Gloria Esperanza Choto and José Amílcar Choto Pleitéz and their family nucleus comprising four identified people with the objective of "adopting the necessary measures to preserve [their] lives [and] personal integrity".

- *Oscar Oswaldo Leiva Mejía, Francisco Javier Hernández Gómez and José Fernando Choto Choto*

27. Regarding the first group of beneficiaries, the Commission notes that the State has reported on the administrative and fiscal investigations, as well as the criminal and constitutional judicial processes opened in favor of Oscar Oswaldo Leiva Mejía, Francisco Javier Hernández Gómez and José Fernando Choto Choto since 2016 (see *supra* para. 11-16). In particular, the Commission notes that according to the State, various investigations have been carried out within the framework of the criminal proceeding (see *supra* para. 13). After prosecution started for the case, the Commission takes note that the Court of Sonsonate issued a judgment on December 21, 2018, declaring the accused guilty for the crime of forced disappearance of persons, imposing sanctions on the person identified as the direct author and those identified as necessary accomplices (see *supra* para. 15). The Commission observed that since the defenses of both the accused and the victims' representatives filed appeals, said criminal proceeding would continue its due process.

28. Thus, the IACHR understands that, despite progress in punishing those responsible, the State continues to investigate the events that led to the disappearance of the three persons identified in 2014. Following the corresponding exchanges of information with the representatives, the IACHR notes that the representatives have requested a statement to hold the State responsible for the violation of certain rights contained in the Convention.

29. Under such circumstances, understanding the nature of the mechanism of precautionary measures in similar situations, the Commission recalls the conclusion by the Inter-American Court concerning the provisional measures in the *Matter of Almonte Herrera in the Dominican Republic* in 2010. Said matter refers, among others, to the disappearance of Mr. Herrera. When deciding to lift such provisional measures in 2015, the Inter-American Court stated:

"14. The passage of time in this matter and the lack of progress in the investigations directly affect the usefulness of these provisional measures, which fundamentally sought to avoid irreparable damage to the life and personal integrity of Mr. Almonte Herrera through the expeditious action of the national authorities to find his whereabouts. However, after more than five years of validity of these measures, the Court still has not obtained results or concrete progress that allow it to clearly determine the events that transpired or the whereabouts of Mr. Almonte Herrera, in such a way that the protection expected to be obtained through them it was ineffective. (...) "⁹.

9 I/A Court H.R. Matter of Juan Almonte Herrera et al. regarding the Dominican Republic. Provisional Measures. Resolution of the Inter-American Court of Human Rights of November 13, 2015. Recital 14 Available (in Spanish) at: https://www.corteidh.or.cr/docs/medidas/almonte_se_04.pdf

30. The Commission notes that the Inter-American Court indicated at that time that, “due to the particular circumstances of the [...] matter and taking into account that the provisional measures are of an exceptional nature and refer to a specific temporary situation so that, due to their own nature, they cannot be perpetuated indefinitely, in addition to the fact that since February 2012 a petition has been processed before the Commission which is in the admissibility stage, it must be ordered that it be lifted and that the eventual violations of the American Convention arising from the events that affected Mr. Almonte Herrera be analyzed through a contentious case, if the premises for such effect are present and outside the framework of the provisional measures ”¹⁰.

31. According to what was stated by the Inter-American Court, also assumed by the IACHR in the resolution to lift for *Luis Alberto Sabando Veliz regarding Ecuador* (PM-1002-04) of January 4, 2021, the Commission agrees that, in the present matter the precautionary measures, as well as international protection measures, sought that the competent authorities of El Salvador adopt “expeditious action” to locate the whereabouts of the corresponding persons and avoid irreparable damage. In the same way, the Commission understands that these precautionary measures, like the provisional measures, cannot be extended indefinitely in time given their temporary nature, even more so given the progress in the corresponding investigations.

32. Similarly, considering the nature of the situation at hand, the Commission remarks that these precautionary measures are related to petition P-1206-17, currently in admissibility. Following the statements of the Inter-American Court regarding the *Matter of Almonte Herrera in the Dominican Republic*, the Commission understands that said petition represents an opportunity to analyze possible violations of the Convention that may have occurred in this matter, provided that the corresponding normative assumptions are given. This, to the extent that an analysis of merit must be carried out on the various actions carried out by the State of El Salvador regarding the open investigations and actions carried out under the corresponding standards. In this regard, the representation's allegations, particularly the request for a statement on violations of the Convention, require an analysis better suited to the framework of the petition and not the present proceeding.

33. On this matter, the Commission also observes that, in compliance with the decision taken for the *Habeas Corpus 40-2015* process before the Constitutional Division of the Supreme Court, the State created a "special commission" whose "exclusive purpose" was to locate the whereabouts of José Fernando Choto Choto, Francisco Javier Hernández Gómez and Óscar Oswaldo Leiva Mejía (see *supra* para. 16). The Commission notes that, according to the information available on said “special commission”:

- It is comprised of Investigation Units of the National Civil Police (PNC): from the municipality of Lourdes Colón, department of La Libertad and the municipality of Armenia, department of Sonsonate; as well as the Police Intelligence Division (DIP) of the municipality of Sonsonate, and the Elite Division Against Organized Crime (DECO). These are all under functional management of the District Attorney of Sonsonate;
- they hold periodic progress and follow-up meetings on the case,
- It establishes procedures to be carried out such as the search for witnesses, raids, searches on land with canine groups of the PNC, interviews of witnesses in prisons, and other investigation procedures.
- It is also responsible of providing periodic reports on their progress, which they provide to the Constitutional Division of the Supreme Court of Justice every 5 months according to the

¹⁰ Ibidem

framework of supervision of compliance with the judgment issued in the *Habeas Corpus* process specified above.

34. Considering what was indicated by the State and not disputed in detail by the representatives, the Commission understands that there are internal mechanisms that continue to carry out such search efforts, which are also monitored every 5 months by a Division of the Supreme Court of the country. For the Commission, said precision is relevant since the Inter-American Court has indicated that if it is verified that the State in question has developed protection mechanisms or actions for the beneficiaries of the provisional measures, it could decide to lift such measures by discharging the obligation of protection on its primary responsible that is the State¹¹. As indicated by the Court, “should the provisional measures be lifted [...], it will correspond to the State, in accordance with its duty to guarantee human rights, and its duty to adopt provisions of domestic law, in accordance with Articles 1 and 2 of the American Convention, to maintain the protection measures that it has adopted and that the Court considered appropriate, and to adopt all those that may be subsequently necessary for as long as the circumstances warrant ”¹².

35. In view of the previous considerations, considering that the elapsed time makes it necessary to carry out evaluations of merit in the framework of the related petition and not in the present mechanism of precautionary measures, and understanding the advances obtained in the investigation, as well as the creation of a “special commission” as part of a decision of the Constitutional Division of the Supreme Court, in light of the principle of complementarity and subsidiarity that governs the Inter-American System as a whole, the IACHR decides to lift these precautionary measures. At the time of making this decision, the Commission takes into account the exceptional and timely nature of the precautionary measures¹³. In addition, it recalls the unavoidable duty of the State of El Salvador to comply with the corresponding investigations and act with due diligence in the terms of the American Convention and applicable international standards. The Commission will appropriately analyze, within the framework of petition P-1206-17, those allegations regarding violations of the rights recognized in the American Convention and applicable instruments.

36. Lastly, and in line with what was indicated by the Inter-American Court in various matters, a decision to lift does not imply to consider, in any way, that the State has effectively complied with the precautionary measures ordered, and it also cannot imply that the State is relieved of its general protection obligations contained in Article 1.1 of the Convention, within the framework of which the State is especially obliged to guarantee the rights of persons at risk and must support the necessary investigations to clarify the facts, and the subsequent consequences established by the corresponding laws¹⁴. As the Inter-American Court has indicated, the adoption of a decision to lift or declare non-compliance of the provisional measures does not imply a decision on the merits, nor does it prejudice the responsibility of the State for the facts denounced¹⁵.

- *María Yolanda Mejía de Hernández, Pedro Antonio Leyva, María Francisca Gómez, widow of Ramos, Gloria Esperanza Choto and José Amílcar Choto Pleitéz and their family nucleus*

¹¹ Inter-American Court, Inter-American Court. Matter of the Jiguamiandó and Curvaradó Communities regarding Colombia. Provisional Measures. Resolution of the Inter-American Court of Human Rights of May 22, 2013, para. 54.

¹² Ibidem

¹³ I/A Court H.R., Matter of Adrián Meléndez Quijano et al. Provisional Measures regarding El Salvador. Order of the Court of August 21, 2013, para. 22, and Matter Galdámez Álvarez et al. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24

¹⁴ I/A Court H.R. Matter of Juan Almonte Herrera et al. regarding the Dominican Republic. Provisional Measures. Resolution of the Inter-American Court of Human Rights of November 13, 2015. Recital 22

¹⁵ I/A Court H.R. Matter of Juan Almonte Herrera et al. regarding the Dominican Republic. Provisional Measures. Resolution of the Inter-American Court of Human Rights of November 13, 2015. Recital 26

37. Regarding the second group of beneficiaries, made up of identified relatives of Oscar Oswaldo Leiva Mejía, Francisco Javier Hernández Gómez, and José Fernando Choto Choto, the Commission notes that, initially, the State implemented certain protection measures in their favor and held a coordination meeting with the parties involved, which merited statements by the Constitutional Division of the Supreme Court, the Prosecutor's Office, and the Office of the Attorney for the Defense of Human Rights (see *supra* para. 6-9 and 11). However, some of the proposed measures were not implemented as they depended on the will of the beneficiaries. Notwithstanding this, the State reported that they would activate them when required by the beneficiaries. Similarly, the State referred to the open investigations into the situation of the next of kin (see *supra* para. 10).

38. Subsequently, the representation reported that the beneficiaries had left the country by 2016 (see *supra* para. 18). The State, on the other hand, stated that the families of the beneficiaries were granted "asylum status" in the United States of America in 2020. According to State records, Mrs. María Yolanda Mejía Hernández and Pedro Antonio Leyva reside in New York City; Mrs. María Francisca Gómez, widow of Ramos resides in the state of Oregon, Mrs. Gloria Esperanza Choto, José Amílcar Choto Pleitéz and their family nucleus reside in the state of California.

39. In this regard, the Commission points out that the information provided by the State is consistent with that provided by the representation since 2016. Given the circumstances, the Commission informs the State that it is materially impossible to implement protection measures in favor of this group of beneficiaries as they have been in the United States since at least 2016 and approximately 5 years have elapsed since they left the country.

40. To sum up, considering the assessments made pertaining the two groups of beneficiaries and after the State's request to lift the precautionary measures, the Commission informs that it does not identify information to support that the requirements of Article 25 of the Rules of Procedure. In this regard, and upon consideration of the temporary and exceptional nature of the precautionary measures¹⁶, the Commission considers that it is appropriate to lift said measures.

V. DECISION

41. The Commission decides to lift the precautionary measures granted in favor of Oscar Oswaldo Leiva Mejía, Francisco Javier Hernández Gómez, José Fernando Choto Choto, María Yolanda Mejía de Hernández, Pedro Antonio Leyva, María Francisca Gómez, widow of Ramos, Gloria Esperanza Choto and José Amílcar Choto Pleitéz and his family nucleus, in El Salvador.

42. The Commission urges the State to continue with the investigations and corresponding actions to locate the whereabouts of Oscar Oswaldo Leiva Mejía, Francisco Javier Hernández Gómez, and José Fernando Choto Choto. In this regard, the Commission will analyze the necessary elements within the framework of petition P-1206-17 related to these precautionary measures, if the regulatory premises for it are present.

43. The Commission requests that the Executive Secretariat notify this resolution to the State of El Salvador and the representatives.

¹⁶ I/A Court H.R., Matter of Adrián Meléndez Quijano et al. Provisional Measures regarding El Salvador. Order of the Court of August 21, 2013, para. 22, and Matter Galdámez Álvarez et al. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24

44. Approved on February 4, 2021 by: Joel Hernández García, President; Antonia Urrejola Noguera, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay; Esmeralda Arosemena de Troitiño; and Julissa Mantilla Falcón, members of the IACHR.

María Claudia Pulido
Acting Executive Secretary