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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION OF PRECAUTIONARY MEASURES 32/2022**

Precautionary Measure No. 1051-20  
Identified members of the digital newspaper “El Faro” regarding El Salvador  
July 8, 2022  
(Follow-up, Extension, and Lifting)

**I. SUMMARY**

1. The Inter-American Commission on Human Rights (IACHR) decides to issue this follow-up resolution on precautionary measures in the terms of Article 25 of its Rules of Procedure. The IACHR recalls the continuous requests that the representatives issued for the precautionary measures to be duly implemented, in addition to the new threatening events alleged. It also considers the reported challenges in carrying out the protection measures to be adopted, which was reported by both parties. In this sense, the IACHR identifies challenges that arose during the time the measures were in force; addresses questions from the parties; develops the scope of these precautionary measures; and is at the parties’ disposal to continue with their implementation.

**II. BACKGROUND INFORMATION**

2. On February 4, 2021, the IACHR issued Resolution No. 12/2021 by which it granted precautionary measures in favor of 34 members of the digital newspaper “El Faro” in El Salvador within the framework of PM-1051-201. Upon analyzing the information submitted by the parties, the IACHR considered, from the *prima facie* analysis, that the rights to life and personal integrity of the 34 identified members of the digital newspaper “El Faro” were in a serious and urgent situation. Accordingly, pursuant to Article 25 of its Rules and Procedures, the Commission requested that the State of El Salvador:

- a) adopt the necessary measures to preserve the life and personal integrity of the identified beneficiaries;
- b) take the necessary measures so that the beneficiaries can carry out their journalistic activities in exercise of their right to freedom of expression, without being subjected to acts of intimidation, threats and harassment;
- c) consult and agree upon the measures to be adopted with the beneficiaries and their representatives; and
- d) report on the actions taken in order to investigate the alleged facts that led to the adoption of the precautionary measures at hand, so as to prevent them from reoccurring.

3. The 34 beneficiaries are the following: (1) C.A.D.S, (2) J.L.S.R, (3) D.V, (4) O.M, (5) M.L.N, (6) C. M, (7) S.A, (8) E.L, (9) V.G, (10) J.A, (11) G.L, (12) N.R, (13) G.C, (14) M.C, (15) R.L, (16) V.P, (17) C.B, (18) O.M, (19) D.R, (20) L.G, (21) M.T, (22) K.R, (23) E.G, (24) D.B, (25) A.S, (26) C.S, (27) A.A, (28) A.B.L, (29) M. A, (30) M.S, (31) J.C, (32) J.R, (33) M.V, and (34) M.A.

**III. SUMMARY OF INFORMATION PROVIDED BY THE PARTIES FOLLOWING THE GRANTING OF THE PRECAUTIONARY MEASURES**

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<sup>1</sup> IACHR. [Resolution 12/2021](#). PM 1051-20. 34 identified members of the digital newspaper “El Faro” regarding El Salvador February 4, 2021.

4. Upon granting the precautionary measures, the IACHR continued to monitor their implementation by requesting information from the parties<sup>2</sup> and holding a working meeting on June 23, 2021, at its 180th Period of Sessions. In a communication dated July 28, 2021, the State requested that these precautionary measures be lifted. This request was forwarded to the representatives on August 9, 2021, pursuant to paragraph 9 of Article 25. Moreover, the request for extension of the precautionary measures in favor of J.N.G.P.; L.M.G.C.; R.M.M.Z.; J.D.L.M.; R.O.G, made by the representatives on October 13, 2021, was submitted to the State on January 19, 2022. The State submitted a response on February 2, 2022. The representatives submitted information on January 31, 2022, and May 26, 2022.

5. Additionally, on December 3, 2020, in the 178th Period of Sessions, the IACHR held a thematic hearing on the situation of freedom of expression in El Salvador.<sup>3</sup>

6. The IACHR summarizes the information presented by the parties in the framework of precautionary measures after they were granted.

**i. Information provided by the State**

7. On February 16, 2021, the State reported that on February 15, 2021, the Ministry of Justice and Public Security (*Ministerio de Justicia y Seguridad Pública*) held an internal meeting “in order to address the design and implementation of the measures, considering the nature of the activity carried out by the beneficiaries.” Subsequently, the State reported that consultation meetings were held with the beneficiaries and/or their representatives on February 24, 2021, and July 6, 2021. On these occasions, the State “explained its interest in establishing agreements on the issues of the proposed beneficiaries’ safety, considering as a background the state actions executed in other cases of precautionary measures before the Commission.” Furthermore, the importance of knowing the needs of each beneficiary was raised to offer a “plan that responds to their particular situation, thus employing a protection plan with a differential and gender approach.” On these occasions, the State offered to implement home security which was reportedly rejected by the beneficiaries. However, the personal telephone number of the head of the Victim and Witness Protection Program (*Programa de Protección a Víctimas y Testigos*) was made available to the beneficiaries to call at any time.

8. With the aim of “interviewing people who feel assaulted, in order to determine the specific acts, protect rights, and obtain details on the facts to be further investigated,” the State indicated that the Prosecutor’s Office carried out summonses to interview each possible victim. The State considered that some persons had not complied with the summons and that this cannot translated into State inactivity. In this regard, the State stated that there was no “real interest” of the beneficiaries in establishing a protection mechanism with the State.

9. The State added that members of El Faro have had access to official conferences and have conducted their journalistic activity “without any restrictions.” Regarding the fiscal investigation carried out by the newspaper, the State alleged that “the Ministry of Finance has explained the basis of its action, indicating that the cases that are audited are due to various criteria and selection parameters, based on the index and probabilities, occurrence and impact of risk, algorithms, and other elements, in addition to being input for the complaints that are received.” Similarly, the State affirmed that, even if no element is found in the deployments of inspection and control powers, this does not invalidate the controls.

<sup>2</sup> The IACHR requested information from the State on April 22, June 28, 2021, January 19, 2022; and from the representatives on February 25, August 9, 2021, and January 19, 2022.

<sup>3</sup> IACHR. [Public Hearing. 178 POS. Situation of freedom of expression in El Salvador](#). December 3, 2020. [only in Spanish].

10. On February 2, 2022, the State provided information through which it reiterated the previous procedures. It also reported that it communicated, both to the beneficiaries and their representatives, on the development of the investigation, even if there was “little information provided to the Attorney General’s Office of the Republic.” The State reinforced the importance of having an interview with each victim “given that, despite the summonses, the Attorney General’s Office reported, at that time, the absence of some of those who had been cited.”

11. The State reported that it held a new call for a conciliation meeting for July 15, 2021, which, at the request of the representatives, was rescheduled for August 25, 2021. At that meeting, the State “reiterated its willingness to achieve a consensus in designing and implementing protection measures in favor of the beneficiaries, it therefore reiterated the possibility of implementing a residential security plan by considering the existing background regarding cases of similar nature as parameters.” According to the State, it was emphasized “how essential it was to carry out an evaluation of each of the beneficiaries in order to identify the particular needs of each of them,” however, this had not been well received by the representatives. In this sense, the State “offered the possibility of giving continuity to the alternative security plan implemented up to that moment, consisting of the designation of an institutional liaison which the beneficiaries could resort to in emergencies.”

12. The State added that the lack of a security plan beyond the institutional liaison designated to handle any emergency is due to the beneficiaries’ refusal to accept the protection that was offered. Furthermore, it was argued that the representatives did not provide a concrete proposal on a security plan. They requested that the IACHR, along with its Rapporteurship for Freedom of Expression, elaborate a concept note that “permits designing an appropriate security plan in accordance with the standards of freedom of expression and protection for journalists.” The State indicated the following:

It is important to emphasize that the plaintiffs have not accepted or will not accept, as they have already stated, any type of action on the State’s part that seeks to resolve or meet their security needs. It is reiterated that the State, in each of the institutions linked to implementing the measures, gave the beneficiaries access to officials and technicians who aware of the issue, who had the ability to dialogue and, in certain cases, to assume commitments in order to reach solutions according to the magnitude of the statements they made. However, regarding these situations, the State has faced an uncooperative, elusive, and reluctant attitude from the beneficiaries to the different protection alternatives that were offered in each of the aforementioned institutions and the proposed state options within the applicable legal parameters. In other cases, these same measures were accepted by the IACHR and have fulfilled the intended objectives.

13. In relation to the allegations regarding social networks and messages against the beneficiaries, the State affirmed that the rights to free expression, as well as to inform and express opinions in journalistic work, are reportedly not absolute. According to the State, “the freedom of the press is subject to journalistic ethics, to the obligation not to transmit false or biased information, as well as not to injure or impair the image, honor, or privacy of third parties.” Moreover, the following was indicated:

The use of social networks to disseminate any type of information, opinions, or even journalistic notes, regarding any topic, not necessarily within the political sphere, places the person who makes this dissemination in the position of being the recipient of opinions contrary to their ideas. This will not always be expressed in their own vocabulary, or in reasonable terms, since the form of expression in social networks is associated with the social context of the person, their educational, and cultural level. This does not impose a limitation to the possibility of using legal mechanisms to protect the safety and integrity of the affected person.

14. In this regard, the State indicated that social networks themselves have means of regulating content, prohibiting threats, and allowing messages of this nature to be reported. In addition, the State added that “it is firm in clarifying that under no circumstances does it persecute, harass, or stigmatize

persons or entities critical of the administration of the Government, whether or not they attribute themselves the quality of journalists, a quality that does not *per se* constitute an exclusion of responsibility for an incorrect exercise of freedom of expression and the press.”

15. The State reiterated that the fiscal investigations that concern the digital newspaper El Faro have a legal basis. In addition, the newspaper’s legal representatives are duly informed of the procedure’s progress. Furthermore, regarding J.D.L.M. and R.O.G., El Faro employees who were denied migration permits, the State indicated that the affected persons did not comply with the relevant legislation. This resulted in the denial of their stay and, therefore, the order to immediately exit the country.

16. On the other hand, regarding investigations related to the facts that gave rise to these precautionary measures, the State indicated that it had not been possible to determine who was directly or indirectly responsible. In order for the investigations to progress, the State reportedly requires the informants’ collaboration. Currently, the relevant cases are reportedly active.

17. Lastly, regarding the request to extend these precautionary measures to new members of the El Faro newspaper, the State alleged that these proposed beneficiaries became members of the media outlet after the facts that support the precautionary measure occurred, and that they do not indicate an individualized situation that places them at risk. Considering the foregoing, the State argued that the situation that places the proposed beneficiaries at risk, which the representatives initially alleged, is not ongoing and request that these precautionary measures be lifted.

## **ii. Information provided by the representatives**

18. On April 14, 2021, the representatives confirmed a meeting was held between the parties on February 24, 2021. The director of the Victim and Witness Protection Program of the Executive Technical Unit of the Justice Sector (*Programa de Protección a Víctimas y Testigos de la Unidad Técnica Ejecutiva del Sector Justicia*) reportedly stated “that the only measures that could be offered to the beneficiaries were to provide them with a personal security plan through members of the National Civil Police (*Policía Nacional Civil, PNC*), through which one or more police officers could accompany the beneficiaries in their work activities and, if required, would also ensure their safety within their homes during the night.” It was agreed that this proposal would be submitted for the consideration of all beneficiaries. Additionally, the representatives indicated that the authorities were requested to provide a telephone number where they could contact the Protection Program in emergencies, and that this was provided.

19. On March 19, 2021, the representatives notified the aforementioned Protection Program that the beneficiaries rejected the suggested protection plan. The representatives recalled that some of El Faro’s work has included articles that look unfavorably upon the PNC. In this regard, the representatives indicated the following:

[...] on the one hand, as it considers that being accompanied by police officers would place them in greater vulnerability, given the participation that the state authorities have had in the situations that have placed them at risk; and on the other hand, because the presence of police officers while they carry out their work could generate an interference in their journalistic exercise and would hinder their freedom of expression.

20. The representatives indicated that it does not consider that the meeting held on February 24, 2021, was an opportunity to reach an agreement. In the representatives’ own words:

The director of the Program limited himself to offering certain measures that were within his competence, but did not carry out any analysis, nor did he consider the particular situation that place the beneficiaries at risk and the circumstances of the specific case, such as the role that the newspaper has had in the public

discussion on the government's management and the participation of the authorities in the situation that have placed them at risk. [...].

21. Regarding the investigations of the alleged facts, the representatives indicated that the Prosecutor's Office requested information from El Faro about its members and requested to interview them. On November 27, 2020, the newspaper reportedly forwarded the requested information. Subsequently, on December 8, 2020, and 14, 2020, the Prosecutor's Office once again requested this information. It indicated that, aside from a list of the members of El Faro, a "certified copy of the employee form" and "certified copy of the labor card" were required. In this regard, the representatives alleged that "far from promoting the clarification of the events, the Prosecutor in charge has only reiterated requests for information to El Faro about elements already available."

22. On April 14, 2021, the representatives indicated that on February 7, 16 and 18, 2021; March 9, 2021; and April 10, 2021, the President of El Salvador published new stigmatizing messages against El Faro and its journalists on social networks. The message mentioned, among other aspects, that they allegedly defend certain political parties, have covered up a sexual assault against a journalist, and that the newspaper is involved in alleged tax crimes. These publications reportedly lead to messages by third parties which harass or even threaten members of El Faro. On this last point, the representatives highlighted the following messages on third parties' social networks: "Mega scandal... Let them run and hide because it's time to settle accounts... None of them should be left standing... We should wipe them all clean" on March 13, 2021; and "it's always the same and they're next to disappear".

23. In that context, on March 17, 2021, an unidentified person went to the offices and sought to confirm if El Faro was based there. When requested their identity and who they were looking for, "the subject repeatedly refused to respond." On March 18, 2021, the same person was again seen in front of the offices, and he made hand gestures towards the guard. These gestures were interpreted as "I am watching you." The representatives also added that the fiscal audit of the newspaper conducted by the Ministry of Finance is allegedly instrumentalized in a "campaign of harassment and legal persecution by the State against the newspaper."

24. On October 13, 2021, the representatives indicated that, up until that moment, they had held meetings with the State on July 6, 2021, and August 25, 2021. They reaffirmed that the beneficiaries rejected the protection plan that the State suggested "because of the obstacle that this could represent in its journalistic exercise and on the basis of the participation that the state authorities in general have in the situation that placed them at risk." According to the representatives, the State's proposal would allegedly place the beneficiaries "in greater exposure and vulnerability" since El Faro has questioned actions of the PNC, who would be the ones in charge of their safety. In addition, it was added that the Association of Journalists of El Salvador (*Asociación de Periodistas de El Salvador, APES*) indicated that the PNC were responsible for over 30 attacks against journalists in 2021. The representatives added that it is "unacceptable" for the State to hold beneficiaries accountable for the lack of implementation of protection measures. In the representatives' own words, the following was indicated:

[...] rejecting police security does not in any way mean the rejection of precautionary measures, and we emphasized our provision and the need to define a plan that is appropriate to the beneficiaries' situation, taking into account their profile, the origin and nature of the risk, as well as the journalistic work of El Faro.

25. The representatives proposed that the State request the Commission, and its Office of the Special Rapporteur on Freedom of Expression, to prepare a concept note in which, based on the facts of this specific case, would allow them to design a security plan in accordance with the standards of freedom of expression and protection for journalists.

26. Additionally, the representatives reiterated its allegation regarding the “instrumentalization” of the fiscal investigation conducted by the Ministry of Finance as a form of harassment against El Faro. It further requested the IACHR to “request the Salvadoran State to provide detailed information on the Ministry of Finance’s conclusions and to make a statement on the representatives’ observations regarding the irregularities thereof.” The representatives also considered that the State’s refusal to issue work permits to J.D.L.M. and R.O.G., two foreign journalists from El Faro, represents yet another action by the Salvadoran government against the newspaper on the grounds that the rejected permit processes were “unprecedented.”

27. On October 13, 2021, the representatives once again reported social media harassment directed at El Faro and its journalists. As indicated, there were stigmatizing messages published by the President of El Salvador, a deputy, a party representative, and an alternate deputy, for example, who reportedly stated that the information published in El Faro is “false” and stated that the newspaper lacks ethics. After these statements, third parties allegedly started to disseminate messages of harassment and threat. In that context, the representatives sent a copy of a few third-party publications, such as: “one day in a press conference they will humiliate you,” from September 15, 2021; “This [R.] if you feel like a man because you actually seem to be something else. You should have said it before the PRESIDENT so he could show you how gossipy you really are... and also humiliate you again because that’s what you actually deserve. [...]”, from September 14, 2021; in regards to the beneficiary N.R., “[t]he mother of that child has been a little bitch since I was a kid, I met her and she always liked thick ones and maybe that’s why this brat came out so self-conscious “, from July 9, 2021; and “it would be so great to crush that wuss on national television, please” from September 14, 2021.

28. Moreover, the representatives reported that on March 24, 2021, at around 7:30 p.m., a vehicle with neon lights on the tires crossed the route that the beneficiary S.A. was driving on and stopped in front of him. The beneficiary indicated that, although he slowed to a stop, another vehicle did the same and stopped in front of him for a couple of minutes and then continued its path. “The beneficiary waited a couple more minutes and realized that another vehicle, also with neon lights, slowly passed him. A few minutes later, S.A. restarted his route and subsequently encountered this vehicle, who was driving at a slow pace, in front of him. The beneficiary then continued his journey.”

29. On April 1, 2021, the beneficiary C.A.D.S. bought a few items at a pharmacy. A Twitter account subsequently posted: “I hope, [Twitter account of C.A.D.S], that those five Gatorade you just bought at the Rondel Italia pharmacy helps you with the obvious hangover you have. Hopefully, there were no ‘discriminatory sexist practices and harassment’ against any of the @\_elfaro\_ colleagues at the party.” This publication was accompanied by the image of three violins [as a pun for the Spanish slang for “rapist,” *violín*] and along with a photo of the pharmacy the beneficiary went to. In this regard, the representatives added that, on February 7, 2020, El Faro reportedly conducted a report that allegedly demonstrates that the account is managed by the President’s Press Secretariat.

30. On June 24, 2021, a private security agent from El Faro reported that a member of the First Lady’s family’s security, when traveling in a vehicle and while passing in front of El Faro’s office, “rolled down the window and pointed a firearm at him.” This agent indicated that he had recognized the vehicle and the person on board due to the proximity of the media office and the family home of the aforementioned authority. In addition, on July 24, 2021, a drone allegedly flew over a beneficiary’s, J.A., house and remained over his garden for few moments. The beneficiary C.A.D.S. also reported observing drones flying over his home. A third journalist from El Faro, J.N.G.P., reported seeing a drone in close proximity to his home on July 14, 2021.

31. Regarding the State's request to lift, the representatives indicated that no information is provided to indicate that the identified risk that gave rise to these precautionary measures are no longer in force. They stated that it is false that the beneficiaries refuse to establish a protection mechanism. They have reportedly reiterated their interest and willingness to establish an adequate protection plan. Additionally, the representatives requested that these precautionary measures be extended to five people who joined the team at the El Faro newspaper after the precautionary measures were granted, namely: (1) J.N.G.P.; (2) L.M.G.C.; (3) R.M.M.Z; (4) J.D.L.M.; and (5) R.O.G. On the other hand, it requested that the precautionary measures be lifted in favor of six beneficiaries who expressed that they do not want to continue being beneficiaries: (1) A.S.; (2) E.G.; (3) M.A.; (4) L.G.; (5) M.T. and (6) J.C.

32. On January 28, 2022, the representatives indicated that the only protection measure available to the beneficiaries is reportedly the telephone liaison with the Justice Sector Executive Technical Unit (*Unidad Técnica Ejecutiva del Sector Justicia*). Thus, although most of the beneficiaries are still in El Salvador, others reportedly took self-protection measures, such as "safeguarding themselves outside of Salvadoran territory." In this regard, the representatives indicated that it is essential that the State adopt proper protection measures to allow the beneficiaries who were "forced to leave the territory" to return.

33. On that occasion, the representatives provided information indicating that, according to an expert opinion carried out on January 12, 2022, 22 members of the El Faro newspaper were identified as targets of *Pegasus espionage software*<sup>4</sup> including editorial heads, journalists, and administrative staff of El Faro. Of the 22 people who were affected, 17 are beneficiaries of these precautionary measures and the other five are proposed beneficiaries that are the subject matter of the request for extension.

34. In addition, according to the expert report, there were 226 interventions on newspaper's members' phones, which "allowed total control of the devices, for periods of up to 17 months of continuous espionage. Of the devices that were attacked, half of them were victims of extraction of personal information and stored data." Additionally, the representatives indicated that when analyzing one of the beneficiaries' telephones, it was alerted that he was being intervened at that time which allowed them to associate the intervention with a *Pegasus* operator within El Salvador. The representatives added that the situation is aggravated as *Pegasus*' interventions regarding the members of El Faro coincide with the days in which they published research that "set an agenda in the country." According to the representatives, the aforementioned "allows us to assume a vigilance motivated by the particular role of the beneficiaries as communicators and journalists" and could be used to "consummate attacks" to the detriment of the rights of the people who are part of El Faro.

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

35. 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 and, in the case of the Member States that have yet to ratify the American Convention, the Declaration of the Rights and Duties of Man. These general oversight functions are established in

<sup>4</sup> Pegasus is "is among some of the most sophisticated spyware available on the market and can infiltrate both iOS and Android devices. To monitor a target, a Pegasus operator uses multiple vectors and tactics [...], including *zero-day exploits* and deception, to penetrate security features in popular operating systems and silently install Pegasus without the user's knowledge or permission." "Once Pegasus is installed, it begins contacting the operator's command and control servers [...] to receive and execute the operator's commands, and send back the private target data, including passwords, contact lists, calendar events, text messages, and live voice calls from popular mobile messaging apps. The operator can even turn on the phone's camera and microphone to capture activity in the phone's vicinity, and use the GPS function to track a target's location and movement." The Citizen Lab. [NSO Group / Q Cyber Technologies Over One Hundred New Abuse Cases](#). October 29, 2019

Article 18 of the Statute of the IACHR, and the precautionary measures mechanism is described in Article 25 of the Rules of Procedure of the Commission. In accordance with the latter, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid irreparable harm to persons.

36. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter “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. Regarding their protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, these measures have the purpose of preserving legal situations while they are under consideration by the IACHR. In the process of reaching a decision, 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” 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.

37. With respect to the foregoing, Article 25(9) provides 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 should assess whether the serious and urgent situation and possible irreparable harm that caused the adoption of the precautionary measures persist, so as to keep the precautionary measures in force. Moreover, the Commission should consider if new situations that might meet the requirements set forth in Article 25 of the Rules of Procedure have subsequently arisen. Similarly, Article 25(10) establishes that the Commission shall take appropriate follow-up measures, such as requesting relevant information from the interested parties on any matter related to the granting, monitoring, and maintenance of precautionary measures. These measures may include, as appropriate, timetables for implementation, hearings, working meetings, and visits for follow-up and review.<sup>5</sup> Through Resolution 2/2020 of April 15, 2020, the IACHR ruled on the possibility of issuing Follow-up Resolutions.<sup>6</sup>

38. On this occasion, the Commission observes that, in addition to the questions presented by the parties regarding the implementation of these precautionary measures, there are two requests presented by the parties under the terms of Article 25 of the Rules of Procedure: a request for the extension of precautionary measures in favor of certain people working in the El Faro Digital Newspaper in El Salvador; and a request to lift, presented both by the State and by the representatives themselves. At the same time, the representatives requested a “concept note” for the effective implementation of precautionary measures. Given the above situation, the Commission has decided to analyze all the requests in this Follow-up Resolution and carry out the appropriate assessments to promote the corresponding implementation in this matter under the terms of Article 25 of its Rules of Procedure.

<sup>5</sup> IACHR. [General guidelines for monitoring the recommendations and decisions of the Inter-American Commission on Human Rights](#). September 30, 2019, para. 29.

<sup>6</sup> IACHR. [Resolution 2/2020](#). Strengthening of the monitoring of precautionary measures in force. April 15, 2020

39. Before proceeding with the aforementioned analysis, the Commission considers it pertinent to recall the scope of these precautionary measures and to carry out certain preliminary questions. The foregoing, given that the parties have once again referred to questions about the Ministry of Finance's work and development, and new issues of a migratory nature. When the precautionary measures were granted on February 4, 2021, the Commission clearly indicated that the analysis of these internal processes of a tax nature essentially requires a substantive assessment in the light of the American Convention and the applicable standards.<sup>7</sup>

40. In this regard, the Commission reiterates that the inspection analysis that the Ministry of Finance reportedly carried out exceeds the nature of this procedure. Thus, in order to qualify whether or not there is an "instrumentalization" of the aforementioned process (see para. 9, 23, 26), in the terms presented by the representatives, it requires substantive assessments and factual determinations that exceed the IACHR's *prima facie* analysis in the light of Article 25 of its Rules of Procedure. Notwithstanding, and to the extent that El Salvador is a State Party to the American Convention, the Commission recalls its obligation to guarantee due process within the framework of the aforementioned domestic tax process in the light of applicable standards. These obligations are maintained regardless of whether or not they are addressed in these proceedings of interim measures.

41. Regarding the decision to refuse immigration permits to foreign journalists J.D.L.M. and R.O.G. (see *para.* 15 and 26), the Commission recalls that, in these proceedings, it is not called upon to evaluate these internal procedures in the light of their compatibility with the American Convention. Nor is it appropriate, in these proceedings, to state whether the two foreign journalists complied with the domestic provisions of the country's migration legislation. Given that the representatives described the situation as an act against journalism in El Salvador (see *para.* 26), the Commission understands that it seeks to challenge that internal decision in the context of this procedure. In this regard, the Commission recalls that this analysis necessarily requires a comparison in the light of the American Convention and applicable international standards. This exercise exceeds these precautionary measures procedure insofar as it focuses on the verification of the requirements of seriousness, urgency, and irreparable harm of the damage under a *prima facie* assessment.<sup>8</sup>

42. Having addressed the previous issues, the Commission proceeds to analyze if the requirements of seriousness, urgency, and irreparable harm of Article 25 of the IACHR Rules of Procedure are met. These considerations can be carried out without reaching substantive determinations.

- *Implementation of precautionary measures in the terms of Article 25 of the Rules of Procedure and assessments of the IACHR to promote their implementation*

43. As a preliminary point, the Commission would like to state that the purpose of the precautionary measures procedure is to avoid irreparable damage in the face of serious and urgent situations within the scope of Article 25 of the Rules of Procedure. When identifying a situation in terms of seriousness, urgency, and irreparable harm, the Commission considers it crucial that the actions to be implemented by

<sup>7</sup> IACHR. [Resolution 12/2021](#). PM 1051-20. 34 identified members of the digital newspaper "El Faro" regarding El Salvador. February 4, 2021. Para 37.

<sup>8</sup> The Commission emphasizes that, as stated in its 2021 Annual Report of its RELE, these decisions in the framework of migratory processes continue to be monitored by its Office of the Special Rapporteur, especially considering the handling of migratory premises as alleged mechanisms of indirect censorship (Art. 13.3 of the IACHR) and the impact that this may have on the exercise of freedom of the press. See: IACHR. Annual Report 2021. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II, El Salvador. OEA/Ser.L/V/II Doc. 64 rev. 1 26 May 2022. [only in Spanish],

the parties take into account this objective and achieve the best protection for the beneficiaries. In this sense, it is not a contentious space in which it will be determined whether the State is internationally responsible for the beneficiaries' human rights violations.

44. The Commission understands, on the one hand, that the State has an obligation to protect persons under its jurisdiction from situations that place them at risk and that arise under the terms established by the American Convention and applicable international standards. This obligation exists independently of being granted international protection measures. On the other hand, and particularly in the framework of international protection measures, there is also a duty of cooperation between the parties to achieve the effective implementation of concrete measures in favor of the beneficiaries, which will require the construction of spaces of mutual trust between the parties. Regarding this last point, the Commission recalls that the President of the Inter-American Court indicated, in the provisional measures granted in the *Alvarado Reyes et al. case*, that in order to achieve the effective implementation of international protection measures, the following is necessary:

the beneficiaries and their representatives are required to offer whatever cooperation is necessary to bring about the effective implementation of the measures. The State must take the pertinent steps for the provisional measures ordered in this Order to be planned and applied with the participation of the beneficiaries of those measures or their representatives in such a way that the measures are implemented diligently and effectively. However, the beneficiaries and their representatives also have the duty to cooperate in order to achieve adequate implementation of the security measures. In this sense, the President highlights the importance of the need for State authorities to establish clear and direct means of communication with the beneficiaries in order to establish the necessary trust for their adequate protection.<sup>9</sup>

45. In view of the above, the Commission acknowledges that the State has expressly voiced its willingness to proceed in the implementation of protection measures in favor of the beneficiaries (see *para.* 11). On that understanding, the Commission observes that the State has taken the following actions:

- i. Spaces for agreement between the parties. These spaces were shared, at least, on July 6 and August 25, 2021, with the aim of reaching agreements on the issue of the beneficiaries' safety. Although the representatives questioned the nature of the meeting of February 24, 2021, the Commission observes that, in that meeting, the State indicated that it sought to advance in agreements with the representatives and the parties;
- ii. Statement of the importance of evaluating each of the beneficiaries and understanding their needs in order to apply a "protection plan with a differential and gender approach";
- iii. Offering a protection plan based on home security, which was reportedly rejected by all beneficiaries;
- iv. The personal telephone number of the Victim and Witness Protection Program (*Programa de Protección a Víctimas y Testigos*) was made available to the beneficiaries to call at any time.
- v. Summonses from the Public Prosecutor's Office to the beneficiaries for the purposes of "determining the specific acts"; "protecting their rights"; and obtaining "details of the facts to be further investigated". However, the State indicated that not all the beneficiaries reportedly attended the summons of the Prosecutor's Office. The investigations concerning the alleged facts are reportedly in an "active" state. To date, however, it has not been possible to identify the responsible parties.

<sup>9</sup> I/A Court H.R. Matter of Alvarado Reyes et al. Provisional Measures regarding the United Mexican States. Order of the President of the Inter-American Court of Human Rights of April 1, 2011. Considerandum 14. See also: IACHR. Resolution 50/2021. Matter of the 7 pregnant women of the Wichí ethnicity with respect to Argentina (PM 216-21) - lifting. July 11, 2021

46. In view of the measures implemented by the State, the Commission notes that the beneficiaries' representatives presented a series of questions regarding these measures, which have been maintained throughout the term of these precautionary measures. With a view to analyzing them, the Commission divides its presentation into the following three aspects: i: Actions aimed at concertation; ii: Measures for the protection of the life and personal integrity of the beneficiaries and the development of their journalistic activities; and iii: Advances in investigations. In this regard, the IACHR considers that this procedure provides it with the technical concepts necessary to promote the implementation of these precautionary measures in the light of the information available in the file. The IACHR expresses that the assessments may change in the future depending on how the implementation of these precautionary measures is developed as long as the requirements of Article 25 of its Rules of Procedure remain in force.

*i. Actions aimed at concertation*

47. The parties have agreed that the internal meetings between them were held in 2021. At these meetings, the State reportedly presented a proposal for a security plan and allegedly expressed the need to assess each of the beneficiaries' specific situation. For its part, the representatives indicated that the meeting on February 24, 2021, was not a space for agreement. It also confirmed its rejection of the initial proposal for a security plan submitted by the State, and ratified its request to have a telephone liaison for emergencies in favor of the beneficiaries. This was subsequently provided by the State. The representatives also reported that it had proposed that the Commission, along with its Office of the Special Rapporteur on Freedom of Expression, draft a note to design a security plan to protect the journalists. In response, the State indicated that the beneficiaries have had "an uncooperative, elusive, and reluctant attitude" to the presented security proposals, and referred to the representatives' request that the Commission develop a "note" on the design of a security plan for the specific matter.

48. Taking into account the available information, the Commission considers it important to recall that "the State must ensure that the beneficiary" plays an active role in selecting the appropriate protection measures.<sup>10</sup> In the terms indicated by the Inter-American Court, must take all such steps as are appropriate so that the measures of protection ordered by the Court will be planned and implemented with the participation of the beneficiary thereof or his representatives, such that said measures are carried out diligently and effectively.<sup>11</sup> The Commission considers "Only through stable, respectful and constructive dialogue with the beneficiaries will the protection measures selected be adequate to the degree of danger that the defender is experiencing and his or her specific work-related needs."<sup>12</sup> To this end, the Commission recalls that the representatives' and the beneficiaries' cooperation is necessarily required with a view to jointly building these spaces for dialogue.

49. Having specified the above, the Commission considers it positive that spaces for dialogue between the parties have been created. These spaces contribute to the implementation of these precautionary measures. However, the Commission observes, as does the Inter-American Court, "that it is necessary to secure as much information and coordination as possible to better implement the measures of protection."<sup>13</sup> In this regard, the Commission calls the parties to continue with the spaces for dialogue and consultation, bearing in mind the construction of stable, respectful, and constructive meetings aimed

<sup>10</sup> IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), December 31, 2011, para. 523.

<sup>11</sup> I/A Court H.R. [Matter of Luis Uzcátegui. Precautionary Measures regarding Venezuela](#), Order of the Court of January 27, 2009. Considerandum 13.

<sup>12</sup> IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), December 31, 2011, para. 523.

<sup>13</sup> I/A Court H.R. [Matter of Luis Uzcátegui case. Precautionary Measures regarding Venezuela](#), Order of the Court of January 27, 2009. Considerandum 13.

at protecting the beneficiaries. In order for the consultation spaces to fulfill their purpose, all the parties involved must be willing to collaborate.

50. In this case, the Commission observes that, following the consultation meetings, it was only possible to agree on the implementation of a telephone liaison between the State and the beneficiaries in emergencies. Regarding the State's proposal consisting of an initial security offer, the Commission understands that the beneficiaries reportedly rejected this proposal. Furthermore, the Commission notes that the State allegedly sought to conduct an individual evaluation for each of the beneficiaries "in order to identify the particular needs of each of them" which was allegedly not well-received by the representatives. In the same vein, the Prosecutor's Office reportedly summoned "people who feel they were assaulted", indicating that "some people had not attended the summons."

51. In analyzing the available information, the Commission understands that the State sought to identify the specific needs of the 34 individuals identified in the precautionary measures. In principle, the Commission does not find sufficient elements to assess how this assessment would hinder the endeavor to offer the best protection in favor of the beneficiaries and to identify concrete measures to be implemented for these purposes. At the same time, the Commission observes that it does not have information on the beneficiaries who appeared at the interview cited by the Public Prosecutor's Office, i.e., whether they were given an individual risk assessment and/or received specific proposals for protection measures.

52. In view of the foregoing, it is recalled that the State has a general obligation to provide protection taking into account the specific situation of the persons at risk. Regarding measures of international protection in favor of those who exercise journalism, the Inter-American Court has indicated the following:

The means and coverage of this protection must respond to the requirements of the circumstances, and be adapted, insofar as possible, to the need to protect the life, personal integrity, and freedom of expression of the beneficiaries and to the specific situations that occur.<sup>14</sup>

53. From the information available, it is observed that, through its internal institutionality, the State sought to define what specific security measures would be appropriate for each of the beneficiaries in the framework of the implementation of these precautionary measures. Although the representatives indicated that they had the same understanding (see *para.* 24), it has not been possible to reach meeting points between the parties.

54. Considering that both parties have expressed their willingness to implement appropriate protection measures in favor of the beneficiaries, the Commission recalls that the protection measures will be appropriate as long as they are tailored to the work needs of the subject being protected. They should be able to be modified as the danger that the journalistic activities poses at different times varies in intensity; special care should be taken to reinforce those measures when a human rights defender is at a critical stage in defending his or her cause.<sup>15</sup> For these purposes, the Commission understands that, since the State is the subject responsible for complying with the obligations arising from the Inter-American System, it is reasonable for understanding each of the beneficiaries' specific situation.

<sup>14</sup> I/A Court H.R. [Subject of the Television Station "Globovisión". Provisional Measures regarding Venezuela](#). Order of the Court of November 21, 2007, considerandum 11.

<sup>15</sup> IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#). December 31, 2011, para. 524

55. In summary, the Commission calls on the parties to continue the dialogue and consultation spaces, taking into consideration the aforementioned assessments. At the same time, the Commission urges the parties to adopt the agreements to be concluded on the basis of mutual collaboration. This implies assessing the State security agencies' recommendations, as well as and the concerns and proposals of the representatives of the beneficiaries, and to jointly design the means by which the measures of protection are provided.<sup>16</sup> The Commission will continue to monitor under the terms of Article 25 of its Rules of Procedure. In addition, it expresses its willingness to continue expanding the relevant contributions for the implementation of these precautionary measures. To this end, spaces for agreement between the parties are necessary. The aim is to find agreements that allow the due protection of the beneficiaries.

*ii. Measures for the protection of the life and personal integrity of the beneficiaries and the development of their journalistic activities.*

56. The Commission observes that, as indicated above, after the precautionary measures were granted and based on the available information, the parties have not been able to agree on any other protection plan aside the aforementioned institutional telephone liaison with the State for "emergencies."

57. According to the State, the beneficiaries were offered a security plan in accordance with other precedents of State actions executed in precautionary measures. This plan also reportedly took into account the beneficiaries' home and was allegedly subject to a "differential and gender approach." In this regard, the representatives indicated that the aforementioned implies a personal security plan implemented by members of the PNC. They allegedly would have accompanied the beneficiaries in their work activities and, if required, would have also protected them in their homes during the night. The representatives rejected the proposal as they consider that it would not be suitable and would place them in greater vulnerability. They indicated that police presence could generate an interference in their journalistic exercise, and recalled that El Faro has included publications which voiced critical views towards the PNC. They also mentioned that the police are allegedly responsible for attacks against journalists in 2021. The State has not addressed this information.

58. In analyzing the information available in its entirety, the Commission notes and considers the following:

- *On the institutional telephone liaison for emergencies:* after its implementation in 2021, the Commission does not identify information that indicates that the beneficiaries activated it at any point. In this regard, the Commission does not have evidence to indicate that this is an unsuitable and ineffective measure. Moreover, assessment elements that allow indicating that the telephone liaison is hindering the beneficiaries' journalistic work are not identified either.
- *Regarding the security plan that the beneficiaries rejected:* the Commission observes that the representatives expressed concern regarding the police presence in the State's initial proposal, and stated it ultimately led to its rejection. The representatives based its rejection on the following: (i) the alleged participation of state agents in the situation that places them at risk; (ii) the fact that some El Faro publications have included critical views towards the PNC; (iii) an assumption of possible "interference" in its journalistic exercise and "obstruction" of its freedom of expression derived from the presence of police officers while

<sup>16</sup> I/A Court H.R. [Subject of the Television Station "Globovisión". Provisional Measures regarding Venezuela](#). Order of the Court of November 21, 2007, considerandum 11.

they carry out their work; and (iv) statistical information from the Association of Journalists of El Salvador (*Asociación de Periodistas de El Salvador, APES*) that indicated that the PNC was responsible for over 30 attacks against journalists in 2021.

59. In this regard, on the one hand, the Commission does not have information indicating that the parties have addressed other protection proposals or options. Nor is there any evidence to indicate that the concerns expressed by the representatives regarding the performance of the beneficiaries' journalistic activities have been addressed independently in the consultation spaces. The foregoing is in line with the requirement to understand each of the beneficiaries' specific situation to define the appropriate actions in their favor. The aim of the actions is allegedly to protect each one as best as possible, and thus obtain additional assessments for it.

60. On the other hand, the Commission also observes that the representatives did not provide concrete elements to assess whether the beneficiaries have been attacked, threatened, or harassed by police officers, or if they have concretely hindered their work in any way. Given the representatives' refusal to police protection, it would be relevant, in the light of the principle of consultation, for the beneficiaries to have specific protection measures proposals which would allow the parties' evaluation within the framework of the existing institutional framework in the country. The Commission recalls that, when assessing the problem raised, in addition to the contextual aspects,<sup>17</sup> States must take into account certain other elements with respect to the specific case, such as: (a) the type of attacks that have been carried out; (b) whether they have occurred repeatedly or not; (c) whether the seriousness of the acts perpetrated over time has increased; and (d) whether State agents participated in the aggressive acts.<sup>18</sup> In this sense, given that this protection plan was not fully implemented, and determining the requirements for the parties to address their assessments in the consultation spaces, the Commission does not have elements of consideration for its assessment.

61. In response to the allegations regarding police participation in the protection plan presented by the State, and in line with the assessment carried out by the Inter-American Court in the case of Members of the Nicaraguan Centre for Human Rights and the Permanent Commission on Human Rights (*Asunto Integrantes del Centro Nicaragüense de Derechos Humanos y de la Comisión Permanente de Derechos Humanos, CENIDH-CPDH*) regarding Nicaragua, these precautionary measures do not in any way exclude the possibility that protection measures be carried out by police officers.<sup>19</sup> As assessed by the Inter-American Court in this matter, these precautionary measures must be implemented with the beneficiaries' participation, ensuring that, to the extent possible, the protection measures are not provided by the security officials who, according to the beneficiaries, are involved in the alleged facts.<sup>20</sup> Therefore, the foregoing does not *a priori* exclude the participation of all police officers.

62. The IACHR reinforces that the State's duty of protection includes adopting adequate and effective protection measures. According to the Inter-American Court, for the measures to be adequate "they must be suitable to face the situation of risk in which the person is found"; and for them to be effective "they

<sup>17</sup> I/A Court H.R., Alvarado Reyes *et al.* Provisional Measures regarding the United Mexican States. Order of the Inter-American Court of Human Rights of December 26, 2010, Considerandum 61.

<sup>18</sup> See arguments of the IACHR in I/A Court H.R., Mery Naranjo *et al.* Provisional measures regarding Colombia. Order of the Court of March 4, 2011, sixth instance.

<sup>19</sup> I/A Court H.R. I/A Court HR. Matter of Members of the Nicaraguan Center for Human Rights (*Centro Nicaragüense de Derechos Humanos y de la Comisión Permanente de Derechos Humanos, CENIDH*) and the Permanent Commission on Human Rights (CPDH) regarding Nicaragua. Provisional Measures. Resolution of the Inter-American Court of Human Rights of October 14, 2019, Considerandum 33

<sup>20</sup> I/A Court H.R. I/A Court HR. Matter of Members of the Nicaraguan Center for Human Rights (*Centro Nicaragüense de Derechos Humanos y de la Comisión Permanente de Derechos Humanos, CENIDH*) and the Permanent Commission on Human Rights (CPDH) regarding Nicaragua. Provisional Measures. Order of the Inter-American Court of Human Rights of October 14, 2019 [only in Spanish], resolute point 2.

must be able to produce the results for which they have been conceived.”<sup>21</sup> The Court has also established the relevance of considering the individuals’ particular protection needs, including, *inter alia*, their personal status or specific situation, as well as a context of particular vulnerability, even “as a result of their work.”<sup>22</sup> In journalists’ case, the Inter-American Court has indicated the following:

[...] States have the obligation to adopt special measures of prevention and protection for journalists subject to special risk owing to the exercise of their profession. Regarding the measures of protection, the Court underlines that States have the obligation to provide measures to protect the life and integrity of the journalists who face this special risk owing to factors such as the type of events they cover, the public interest of the information they disseminate, or the area they must go to in order to do their work, as well as to those who are the target of threats in relation to the dissemination of that information or for denouncing or promoting the investigation of violations that they suffered or of those they became aware of in the course of their work. The States must adopt the necessary measures of protection to avoid threats to the life and integrity of journalists under those conditions.<sup>23</sup>

63. Furthermore, the Court has emphasized, in the case of the “Globovisión” television station in Venezuela, the importance of providing protection measures that respond to the circumstances and are adapted to the needs required to protect, *inter alia*, the freedom of expression of the journalists involved.<sup>24</sup> In this sense, the implemented measures must not hinder the professional activities of those working in the media.

64. In summary, the Commission requests the parties consider these assessments in future consultation spaces and in order to determine protection plans that are suitable and effective for the beneficiaries’ specific situation. The Commission will continue assessing the beneficiaries’ situation and parties’ request to continue reporting on the protection plans that are implemented in response to the assessments presented in this Resolution.

### *iii. Advances in investigations*

65. The Commission has considered that the investigation of the facts that merited the precautionary measures is part of the State’s duty of protection to cease the risk against the beneficiaries.<sup>25</sup> In this matter, the representatives questioned the actions of the Prosecutor in charge of the case. They indicated that they requested information from the digital newspaper El Faro on elements that it allegedly already had. Regarding the subpoenas, only some people reportedly attended. In the light of the above, the Commission understands that the investigations allegedly remain open and that certain proceedings are still be pending. Insofar as the parties have expressed an interest in reducing the sources of the risk and not repeating facts such as those alleged in these proceedings, the Commission considers that the necessary steps should be taken diligently. In line with the foregoing, the Commission recalls the need for mutual cooperation in the framework of the implementation of these precautionary measures and in the terms of Article 25 of its Rules of Procedure.

<sup>21</sup> I/A Court H.R. [Case of Human Rights Defender et al. v. Guatemala](#). Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 283, para. 157.

<sup>22</sup> I/A Court H.R. [Case of Human Rights Defender et al. v. Guatemala](#). Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 283, para. 141.

<sup>23</sup> I/A Court H.R. [Case of Velez Restrepo y Familiares v. Colombia, Colombia](#). Preliminary objection, merits, reparations, and costs. Judgment of September 3, 2012. Series C No. 248, para. 194.

<sup>24</sup> IACHR Court. [Matter of the Television Station "Globovisión" regarding Venezuela](#). Resolution of the Inter-American Court of Human Rights of November 21, 2007. [only in Spanish].

<sup>25</sup> IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#). December 31, 2011, para. 433.

- *Validity of the risk and analysis of the request for extension of precautionary measures under the terms of Article 25 of its Rules of Procedure*

66. In its *Country Report on the Situation of Human Rights in El Salvador of 2021*, in regard to context, the Commission identified the following:

In a context of serious affectations to democratic institutions, the IACHR, since its on-site visit, received complaints about the growing hostile environment for the exercise of freedom of expression in El Salvador, which would particularly affect independent journalists. Among the main concerns, several actors mentioned a recurring stigmatizing discourse promoted from the governmental spheres. The alleged official hostility includes intimidating messages and disqualification from their work, accusing certain journalists, for example, of spreading “fake news”, of “mercenaries” and “paid feathers”, as well as amplifying the dissemination of comments from users who criticize journalists on social networks.<sup>404</sup> According to the information received, such accusations would usually occur after publications or journalistic investigations that document alleged cases of government corruption, arbitrary use of public funds, or questionable behavior by members of the executive branch. The recurrent use of these messages by government actors would contribute to creating a degrading environment towards the press, entrenching the growing social perception of journalists and media as “enemies” of the Salvadoran people.<sup>26</sup>

67. Subsequently, on January 31, 2022, the IACHR, its Office of the Special Rapporteur for Freedom of Expression, and the Regional Office of the United Nations High Commissioner for Human Rights (OHCHR) expressed concern about the findings regarding the use of *Pegasus* software to spy on journalists and civil society organizations in El Salvador.<sup>27</sup> On that occasion, the IACHR was informed of the results of an expert report carried out by *Citizen Lab* of the University of Toronto and the *Access Now* initiative. It identified that at least 35 people from the Salvadoran media and civil society organizations were intervened on their phones with the *Pegasus* malware, created by the company NSO Group.<sup>28</sup> In its public communication, the IACHR, its Special Rapporteur for Freedom of Expression, and OHCHR understood the following based on the expert opinion:

The report indicates that, of the 35 people who were allegedly spied on, at least 22 are members of the journalistic investigation portal *El Faro* [19 of them are beneficiaries of precautionary measures]. The media team reportedly remained under constant surveillance between at least June 29, 2020, and November 23, 2021. The expert opinion was also able to conclude the telephones were reportedly accessed on specific dates which coincide with times when the newspaper was developing, had published, or was close to publishing reports of public interest, and in the context of relevant national political debates. This type of practice not only violates the right to privacy, but also has the potential to affect the rights inherent in the exercise of journalism. This includes the reservation and integrity of sources, as well as the rights of other people in their environment.

68. The Inter-American Commission and its RELE have assessed the “serious negative impact” in the framework of the exercise of freedom of expression due to cyber surveillance programs that operate outside the law or in regulatory frameworks that do not comply with Inter-American standards. They indicated that “the violation of privacy of communications makes people cautious of what they say and—therefore—of what they do; it instills fear and inhibition as part of the political culture, and it forces individuals to take precautions in communicating with others”.<sup>29</sup> In this sense, by way of reference, in the framework of the precautionary measures mechanism, the IACHR has taken into consideration the silencing effect derived from a constant self-censorship to which people would be subjected for fear of

<sup>26</sup>IACHR, [Human Rights Situation in El Salvador](#) October 14, 2021, para. 312

<sup>27</sup> IACHR, [Press Release 22/22](#), January 31, 2022.

<sup>28</sup> IACHR, [Press Release 22/22](#), January 31, 2022.

<sup>29</sup> IACHR, [Freedom of Expression and the Internet](#), December 31, 2013, para.150.

being the target of violations of their rights.<sup>30</sup> This has a particular impact on public debate and the resulting democratic control.

69. More recently, on April 13, 2022, the Special Rapporteur for Freedom of Expression warned about the risks of criminalization of legitimate exercise of freedom of expression in El Salvador based on legislative reforms. It also referred to the adoption of amendments to the Criminal Code and the prohibitions specifically addressed to the media in the Gang Prohibition Act (*Ley de Proscripción de Pandillas*). On that occasion, the Special Rapporteur for Freedom of Expression indicated the following:

“[...] the present reforms, as they were drafted, activate risks of severe criminalization of legitimate activities in society and of special importance for democratic life, such as journalism, the defense of human rights, parliamentary activity, academic research, among others. All these activities require guarantees of freedom of expression and as a whole contribute to society being informed about its environment and being able to participate freely in the decisions that impact it. The democratic understanding of matters of general interest -including citizen security- requires legal certainty so that people can participate freely and in an informed manner in matters that concern them as a society without fear of being criminalized.”<sup>31</sup>

70. In the previously identified context, the Commission observes that the representatives referred to certain facts of particular concern against members of the El Faro Digital Newspaper:

- i. The continuity of publication and dissemination, including by state authorities, as well as stigmatizing messages and harassment from third parties against the beneficiaries, highlighting March 9 and 13; and April 10; July 9; and September 14 and 15, 2021;
- ii. On March 17, 2021, an unknown person was at the El Faro offices. They sought to confirm whether those offices were where El Faro was based. The next day this person was reportedly seen in front of the offices twice. They made gesture to the guard with their hands, which was interpreted as “I am watching you”;
- iii. On March 24, 2021, the vehicle that the beneficiary, S.A., was driving was allegedly interrupted by a vehicle that stopped in front of it while the beneficiary was driving. Another vehicle then slowly passed them by. Upon restarting his route, the beneficiary again encountered a second vehicle in front of them which moved at a very slow pace, in an alleged action to intimidate them;
- iv. On April 1, 2021, information regarding the location and actions of the beneficiary C.A.D.S. after going to pharmacy was reportedly disseminated on the internet followed by defamatory messages;
- v. On June 24, 2021, a security staff member, who works for a family member of a high state authority, lowered the car window and pointed a firearm at an El Faro security officer while riding in a vehicle by the El Faro office; and
- vi. The beneficiaries reportedly observed drones flying over their rooms, specifically highlighting an event that took place on July 24, 2021

71. Regarding social networks and messages from high authorities, the IACHR has detailed the following:

By publishing these types of messages, people who participate in the public debate in a leading way operate as a vector that amplifies and accelerates the dissemination of stigmatizing messages and, in this way, exponentially increases the likelihood that these messages be spread or supported by certain sectors of

<sup>30</sup> IACHR. [Resolution 6/2014 \(PM 30-14\)](#). Case of Fernando Alcibiades Villavicencio Valencia et al. v. Ecuador. March 24, 2014 [only in Spanish]; IACHR. [Resolution 33/2014 \(PM 196-14\)](#). Case of Julio Ernesto Alvarado regarding Honduras. November 5, 2014 [only in Spanish]; IACHR. [Resolution 3/2021 \(PM 968-20\)](#). Mariano Valle Peters regarding Nicaragua. January 8, 2021.

<sup>31</sup> IACHR. [Press Release R80/22](#). April 13, 2022.

society. As the Inter-American Court has indicated in the *Case of Perozo et al. v. Venezuela*, in certain contexts and given the perception that may be generated, “it is possible to consider that the declarations of high-ranking public officials created or at least, contributed to emphasize or exaggerate situations of hostility, intolerance or animosity of some sections of the population towards the people linked to such media”<sup>32</sup> towards certain people, as could happen in the matter at hand. In this vein, within the framework of precautionary measures, the IACHR has considered that the existence of a situation of animosity can generate a climate conducive to the violation of rights, particularly when they involve the participation of high state authorities.<sup>33 34</sup>

72. In the same vein, the Inter-American Court has affirmed, in the framework of provisional measures, that:

In a democratic society, public officers have a position of guarantor of the fundamental rights of people and, therefore, their statements cannot ignore these or constitute forms of direct or indirect interference for those who seek to contribute to the defense of human rights. This duty of special care is particularly accentuated in situations of greater social conflict, or social or political polarization, precisely because of the set of risks that they may imply for certain people or groups at any given time. Therefore, it is not only the responsibility of the state authorities to respect such rights but also to guarantee them, including against third parties.<sup>35</sup>

73. In this matter and as indicated, the Commission observes that the messages that the representatives submitted, which are attributed to third parties, raise a series of expressions addressed to the beneficiaries in intimidating tones. They make use of expressions that call for threats against their rights and the dissemination of private information, such as photos, routine, among others, and sexual references, including regarding family members. The Commission observes that, under this framework, the specific facts were allegedly presented.

74. The aforementioned assessments are relevant, insofar as the IACHR observes that the State did not contest the facts alleged by the representatives, such as the presence of unknown persons searching for and/or passing by the offices where the beneficiaries work, who allegedly made threatening gestures and pointed a weapon at the security agent; alleged following of a vehicle driven by a beneficiary, and drones flying over and remaining in the residences of members of El Faro (see *supra* para. 30). In this regard, the IACHR notes that the State did not provide information on these facts, and did therefore not indicate, for example, the initiation and development of investigations, identification of those responsible, among others. In this context, the representatives indicated that some of the beneficiaries were forced to leave the country as a protection measure.

75. In addition, in January 2022, it was made public that beneficiaries were the object of *Pegasus* espionage software. The personal information of several of them was extracted. According to the representatives, the expert opinion indicated that the incident could be linked to a software operator within El Salvador (see *para.* 34). Upon requesting information from the State, the Commission observes that, in the framework of the precautionary measures, the State did not make any statement on the matter. In addition, it did not submit information on the investigations it was carrying out to clarify the facts or determine the scope of the information extracted from beneficiaries who are in Salvadoran territory. This

<sup>32</sup> I/A Court H.R. [Case of Perozo et al. v. Venezuela](#). Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 160

<sup>33</sup> IACHR, [Resolution 55/2021](#). Precautionary Measure No. 576-21. Matter of José Domingo Pérez Gómez and his nuclear family regarding Peru. July 25, 2021; IACHR, [Resolution 22/2019](#). Precautionary Measure No. 125-19. Matter of María Corina Machado Parisca regarding Venezuela. April 12, 2019. [only in Spanish].

<sup>34</sup> IACHR, [Resolution 76/2021](#). Bertha María Deleón Gutiérrez regarding El Salvador (PM 475-21). September 19, 2021, para. 31.

<sup>35</sup> 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 12. [only in Spanish],

is particularly relevant given that the complaint about espionage based on *Pegasus* software was made public and led to statements from international organizations which called on the State to take action in this regard.

76. Although the IACHR understands that, within the framework of the thematic monitoring actions of the IACHR, the State reported that “the origin of these interventions is unknown, it is therefore carrying out the corresponding investigations in order to determine the responsibility and authorship of these events, which also allegedly infiltrated the devices and communications of state officials”.<sup>36</sup> At the same time, in the framework of the 183rd Session, during the hearing on “The human rights situation in the context of cyber surveillance in El Salvador”, the State argued that under no circumstances does it exercise persecution, harassment, or stigmatization towards persons critical of the government’s administration. It added that there were 33 complaints from public employees and officials, therefore, the illegal cyber surveillance by means of Pegasus is reportedly not a crime that exclusively affects journalists and it is not necessarily attributable to State agents.<sup>37</sup> However, within the framework of this procedure, the Commission did not receive information on the measures taken in this regard. Particularly with regard to the specific situation of the beneficiaries.

77. The Commission considers that extracting personal information or information specific to the beneficiaries’ journalistic activities, in the terms presented in this procedure, is an element to be considered within the situation of vulnerability they face, and it should be noted that it impacts the beneficiaries’ safety. Even though, according to the information available, the interventions allegedly occurred between June 2020 and November 2021 with a significant number between April and May 2021,<sup>38</sup> it is decisive for the Commission that the State reinforces its efforts in the area of investigation. This is required in order to identify, for example, the persons responsible; the possible use of the extracted information; how the surveillance was carried out; among others. This would help understand how it affected the beneficiaries’ prior situation and how it affects their current situation. The Commission emphasizes that this type of activity could intimidate the regular activities that the beneficiaries carry out for the media that they comprise in El Salvador. In this sense, it is relevant to consider these assessments when establishing the protection plan to be implemented in the beneficiaries’ favor.

78. When considering what has been stated by both parties, in light of the information on the continuity of risk events, as well as taking into account that the beneficiaries continue to carry out their work as journalists in El Salvador, the IACHR concludes, under a *prima facie analysis*, that the requirements of seriousness, urgency, and irreparable harm established in Article 25 of the Rules of Procedure remain in force. In the same vein, the IACHR considers that it is not appropriate to lift the precautionary measures for all the beneficiaries in the terms proposed by the State. The IACHR will analyze in a subsequent section the request for partial lift.

- *Analysis of the request for extension under Article 25 of the Rules of Procedure*

79. Within this framework of the current risk identified by the IACHR, the representatives presented a request to extend these precautionary measures to the new members of El Faro: J.N.G.P.; L.M.G.C.; R.M.M.Z; J.D.L.M.; R.O.G. (*see supra* para. 31). According to the information provided, these persons were allegedly the object of Pegasus espionage software. Furthermore, it was indicated that, on July 14, 2021, the proposed beneficiary J.N.G.P. reportedly observed a drone flying over the vicinity of their residence

<sup>36</sup>IACHR, [Press Release 22/22](#), January 31, 2022.

<sup>37</sup> [IACHR, 183 POS, March 16, 2022, Hearing 11: The Situation of Human Rights in the Context of Cyber Surveillance in El Salvador](#).

<sup>38</sup>IACHR, [Press Release 22/22](#), January 31, 2022.

(*see supra* para. 30). The State, for its part, alleged that these individuals started working at the newspaper after the facts, and that the representatives did not submit information indicating an individualized risk situation against them (*see supra* para. 17). Additionally, from the information provided by both parties, it appears that the proposed beneficiaries J.D.L.M. and R.O.G. did not receive a work permit in El Salvador, and therefore left the country the State's request.

80. To the extent that the representatives have requested the "extension" of these precautionary measures, the Commission recalls that one of the requirements is that the alleged facts have a "factual connection" with the events that called for the initial adoption of the precautionary measures.<sup>39</sup> In this regard, the IACHR observes that the proposed beneficiaries are all members of the newspaper El Faro, and that J.N.G.P.; L.M.G.C. and R.M.M.Z. reportedly work from El Salvador, while J.D.L.M. and R.O.G. have left the country. It should be noted that, at the time these precautionary measures were granted, the IACHR assessed the following:

[...] although the applicants have not reported specific events of risk for each of the members, the Commission understands that, in light of the nature of the alleged facts, it is possible to indicate that there is a risk common to all of them, inasmuch as they are members of that media outlet and continue to carry out journalistic activities related to the topics they cover. In that sense, the Commission notes that there is a link between the events they face and the activities that their members carry out from their various positions within the digital media outlet. In making this determination, the Commission takes into account that the main specific events reported have occurred upon investigations that "El Faro" develops and publishes, or after its participation in certain public spaces, such as before the Legislative Assembly of El Salvador or press conferences before the Executive branch. Similarly, it is also noted that, unlike other media, the members of "El Faro" have an alleged greater visibility and high exposure in Salvadoran society.<sup>40</sup>

81. Thus, the IACHR considers that the requirement of "factual connection" is met in relation to the proposed beneficiaries J.N.G.P.; L.M.G.C., and R.M.M.Z., who are members of El Faro and continue to carry out their work related to journalism in El Salvador. Regarding the proposed beneficiaries J.D.L.M. and R.O.G., the Commission notes that, although they work at the El Faro newspaper, it does not currently have information that indicates their current presence in El Salvador since they did not receive the corresponding work permit. This is without prejudice to the State's obligations to investigate the alleged use of Pegasus software against them.

82. In this sense, now commencing the analysis of the requirement of *seriousness*, the IACHR considers that it is met for J.N.G.P.; L.M.G.C., and R.M.M.Z. to the extent that, as members of the El Faro media, they may be subject to harassment, intimidation, and acts of violence as detailed above (*see supra* paras. 66-78), particularly considering that substantial portion of the alleged events involve incidents in the El Faro offices where they work. These individuals even reportedly suffered, along with the current beneficiaries, certain acts of intimidation (*see paras.* 30 and 33). Regarding the requirement of *urgency*, the Commission considers that it is met since the facts described suggest that the situation that placed the beneficiaries at risk is likely to continue and exacerbate over time, in view of the fact that it is allegedly related to the journalism work carried out by the proposed beneficiaries in the current context of El Salvador. Regarding the requirement of *irreparable harm*, the Commission considers that it has been met, insofar as the potential impact on the rights to life and personal integrity, by their very nature, constitutes the maximum situation of irreparability.

<sup>39</sup> I/A Court H.R. [Case of Fernández Ortega et al. v. Mexico](#). Provisional Measures. Order of the Inter-American Court of Human Rights of November 23, 2010, considerandum 11. (Only available in Spanish)

<sup>40</sup> IACHR. [Resolution 12/2021](#). PM 1051-20. 34 identified members of the digital newspaper "El Faro" regarding El Salvador. February 4, 2021, para. 43.

- *Analysis of requests to lift*

83. In this matter, the Commission has received requests to lift from both the State and the representatives. On the one hand, the State has requested these precautionary measures be lifted in their entirety, and mainly alleged that the State has been proactive in the implementation of protection measures. On the other hand, the representatives requested the measures in relation to (1) A.S.; (2) E.G.; (3) M.A.; (4) L.G.; (5) M.T. and (6) J.C. be lifted, given that they expressed their will not to continue in this procedure. Moreover, in response to the State, the representatives alleged that it did not submit sufficient information to indicate that the risk has ceased.

84. Article 25(9) sets forth 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 should assess if the serious and urgent situation and possible irreparable harm that caused the adoption of the precautionary measures persist. Moreover, the Commission shall consider whether new situations that might meet the requirements set forth in Article 25 of the Rules of Procedure have subsequently arisen. Considering that, in the preceding paragraphs, the Commission assessed that the risk of the beneficiaries is in force under the terms of Article 25 of its Rules of Procedure, on this occasion it will focus on the request for withdrawal of representatives.

85. In this regard, the Commission recalls that Article 25 (6) (c) of its Rules of Procedure establishes that “when considering the request [for precautionary measures]”, “the express agreement of the potential beneficiaries shall be taken into account, when the request is submitted by a third party [...]”. This element was considered by the Commission when granting these precautionary measures in 2021. However, considering that the six persons that the representatives have identified have withdrawn from participating in this procedure, the Commission understands that they have withdrawn their “express agreement” for the purposes of being considered beneficiaries in this matter. In this sense, given the expressed will of the six identified beneficiaries, the Commission proceeds to lift these precautionary measures their favor. Consequently, it will no longer monitor, within the framework of monitoring the precautionary measures, the specific situation of (1) A.S.; (2) E.G.; (3) M.A.; (4) L.G.; (5) M.T. and (6) J.C. without prejudice to the fact that the IACHR may act, in the event of possible allegations of human rights violations, through other mechanisms at its disposal. The aforementioned decision does not impact the international obligations of the State of El Salvador under the terms of Article 1.1 of the American Convention, and applicable standards, in favor of such persons to be under its jurisdiction.

## **V. BENEFICIARIES**

86. The Commission declares as beneficiaries (1) C.A.D.S., (2) J.L.S.R., (3) D.V, (4) O.M, (5) M.L.N, (6) C.M, (7) S.A, (8) E.L, (9) V.G, (10) J.A, (11) G.L, (12) N.R, (13) G.C, (14) M.C, (15) R.L, (16) V.P, (17) C.B, (18) O.M, (19) D.R, (20) K.R, (21) D.B, (22) C.S, (23) A.A, (24) A.B.L, (25) M.S, (26) J.R, (27) M.V and (28) M.A. as well as (29) J.N.G.P.; (30) L.M.G.C. and (31) R.M.Z., for whom these precautionary measures are extended and who are duly identified in this procedure.

## **VI. DECISION**

87. The Inter-American Commission on Human Rights considers that this matter continues to meet *prima facie* the requirements of seriousness, urgency, and irreparable harm pursuant to Article 25 of its Rules of Procedure under the terms indicated throughout this resolution. Accordingly, it decides as follows:

- a) To maintain the precautionary measures granted in favor of the members of the newspaper El Faro (1) C.A.D.S., (2) J.L.S.R, (3) D.V, (4) O.M, (5) M.L.N, (6) C.M, (7) S.A, (8) E.L, (9) V.G, (10) J.A, (11) G.L, (12) N.R, (13) G.C, (14) M.C, (15) R.L, (16) V.P, (17) C.B, (18) O.M, (19) D.R, (20) K.R, (21) D.B, (22) C.S, (23) A.A, (24) A.B.L, (25) M.S, (26) J.R, (27) M.V and (28) M.A., for which reason it requires the State of El Salvador to continue to adopt the necessary measures to effectively guarantee their life and personal integrity, in a way to guarantee that the beneficiaries can carry out their journalistic activities in the exercise of their right to freedom of expression without being subjected to acts of intimidation, threats and harassment, in terms of the requests made by Resolution 12/2021 considering the assessments of this resolution;
- b) Extend precautionary measure 1051-21 in favor of (29) J.N.G.P.; (30) L.M.G.C. and (31) R.M.M.Z., thereby requesting El Salvador the same terms as requested by Resolution 12/2021;
- c) Lift the precautionary measures in favor of (1) A.S.; (2) E.G.; (3) M.A.; (4) L.G.; (5) M.T., and (6) J.C.;
- d) To request the parties to submit, within 90 days from the date of notification of this resolution, concrete, detailed, and updated information on the beneficiaries' situation and measures adopted for the implementation of this precautionary measure with a view to continuing to evaluate their situation under the terms of Article 25 of the Rules of Procedure;
- e) Request that the parties continue with the consultation and coordination spaces at the domestic level within the framework of the implementation of these precautionary measures in light of the considerations set forth in this resolution;
- f) To express the willingness of the IACHR, through its Rapporteurship for Freedom of Expression, to deepen the technical and thematic contributions relevant to the implementation of these precautionary measures in accordance with the principle of agreement between the parties;
- g) To express the willingness of the IACHR to carry out an on-site visit to El Salvador, with prior consent from the State, in order to verify the situation of the beneficiaries of these precautionary measures, which may include, among others, a working meeting with the parties, and meetings with the beneficiaries and the domestic authorities directly responsible for the implementation of these precautionary measures. The foregoing, as part of the appropriate follow-up measures for the effective implementation of these precautionary measures; and
- h) To continue implementing the appropriate follow-up measures pursuant to Article 25(10) and other provisions of its Rules of Procedure.

88. The Commission requests the parties to submit the *aforementioned* information to the Commission within 60 days from the date of this resolution.

89. The Commission instructs the Executive Secretariat to notify this Follow-up Resolution to the State of El Salvador and to the representatives.

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90. Approved on July 8, 2022, by Julissa Mantilla Falcón, President; Edgar Stuardo Ralón Orellana, First Vice-President; Esmeralda Arosemena de Troitiño; Joel Hernández García; Roberta Clarke; and Carlos Bernal Pulido, members of the IACHR.

Mario López-Garelli  
By authorization of the Executive Secretary