
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 48/2023**

Precautionary Measure No. 574-23
Cesar Bernardo Arévalo de León and Karin Herrera Aguilar
regarding Guatemala¹
August 24, 2023
Original: Spanish

I. INTRODUCTION

1. On July 24, 2023, the Inter-American Commission on Human Rights (“the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures filed by Alfredo Ortega Franco and Christian González Chacón (“the applicants”) urging the Commission to require that the State of Guatemala (“the State” or “Guatemala”) adopt the necessary measures to protect the rights of Cesar Bernardo Arévalo de León and Karin Herrera Aguilar,² who are part of the presidential formula of the political party *Movimiento Semilla* in Guatemala, and who are allegedly at risk in the country.

2. In accordance with the terms of Article 25 of its Rules of Procedure, the IACHR requested additional information from the applicants on July 26, 2023, who replied on July 31, 2023. The IACHR then forwarded information and requested information from both parties on August 3 and 18, 2023. The State sent its reports on August 11 and 19, 2023 and the applicants sent information on August 13, 15, 19, and 21, 2023.

3. Upon analyzing the submissions of fact and law furnished by the parties, the Commission considers that the information presented shows *prima facie* that Cesar Bernardo Arévalo de León and Karin Herrera Aguilar are in a serious and urgent situation, given that their rights to life and personal integrity are at risk of irreparable harm. Therefore, the Commission requests that Guatemala: a) adopt the necessary measures to protect the rights to life and personal integrity of Cesar Bernardo Arévalo de León and Karin Herrera Aguilar in light of the assessments of this resolution; b) consult and agree upon the measures to be adopted with the beneficiaries and their representatives; and c) report on the actions taken to investigate the alleged facts that gave rise to the adoption of this precautionary measure, so as to prevent them from reoccurring.

II. SUMMARY OF FACTS AND ARGUMENTS PRESENTED BY THE PARTIES

A. Information provided by the applicant

4. According to the applicants, Cesar Bernardo Arévalo de León is founder of the political party *Movimiento Semilla* and has allegedly held several public positions,³ and Karin Herrera Aguilar carries out scientific research and as a university professor.⁴ The proposed beneficiaries obtained the second place in the electoral results for the Presidency of the Republic in the first electoral round of June 25, 2023. After the second round of elections held on August 20, 2023, they were reportedly elected.

¹ Pursuant to Article 17.2.a of the Commission's Rules of Procedure, Commissioner Edgar Stuardo Ralón Orellana, a Guatemalan national, did not participate in the debate or deliberation of this matter.

² The request was also filed in favor of the elected candidates of the *Movimiento Semilla* and the members of the Provisional Board of Directors of the Pro-Formation Committee of the *Movimiento Semilla* political party, which total 52 people. However, the allegations are mainly focused on Cesar Bernardo Arévalo de León and Karin Herrera Aguilar.

³ It was reported that he had been Guatemala's ambassador to Spain, and had been an executive at the United Nations. In addition, he was recently a member of Congress of the Republic for *Movimiento Semilla*. His career is allegedly based on peace building and the role of the army in democratic societies.

⁴ It was reported that she was the vice president of the College of Pharmacists and Chemists of Guatemala and president of the Association of Biological Chemists of Guatemala. She was also a member of the Research Advisory Board of Universidad de San Carlos de Guatemala.

5. Regarding the *context of the elections in Guatemala*, the applicants alleged that *Movimiento Semilla* has been subject to criminalization and political persecution, and they also questioned the actions of various state authorities. It was alleged that these actions reportedly sought to prevent the proposed beneficiaries from undertaking their positions and prevent them from participating in new elections, therefore leading them to understand that their political rights are at risk. On June 30, 2023, nine of the political parties - identified by the applicants as belonging to the “ruling coalition” - filed an appeal for protection of constitutional rights (*amparo*) before the Constitutional Court (CC) in which the *Movimiento Semilla* was accused of perpetuating an “electoral fraud” following the results of the first round of elections. On July 1, 2023, the CC issued a resolution in which it ordered all the Electoral Boards of the country to carry out a new scrutiny review hearing and the Supreme Electoral Tribunal (TSE) to suspend the procedure for the certification of results. The applicants questioned the decision of the CC.

6. On July 12, 2023, the Seventh Pluripersonal Judge of First Criminal Instance, Fredy Orellana, ordered the suspension of the legal personality of the political party *Movimiento Semilla* and indicated that the party could not “participate in any subsequent political act, and no positions could be awarded to candidates of the party”. The head of the Special Prosecutor’s Office Against Impunity (FECI), Rafael Curruchiche, alleged irregularities in the collection of signatures required for the constitution of the political party. The applicants questioned the decision of the judge and the Feci and indicated that internal regulations prohibit political parties to be suspended or cancelled during the electoral process. It was alleged that *Movimiento Semilla* could not have access to the file because it was declared confidential, for which it filed an appeal for protection of constitutional rights (*amparo*) to the CC.

7. On July 13, 2023, the Public Prosecutor’s Office raided the headquarters of the Citizen Registry of the TSE. The Registrar, which is responsible for the registration of political parties and candidates, was warned by Judge Fredy Orellana to comply with the order to suspend the political party *Movimiento Semilla*. That same day, the CC issued a resolution in which it ratified the results certified by the TSE and confirmed that the second round of the presidential election would be held on August 20, 2023, as scheduled by the competent authority. The CC indicated that the judicial decision to provisionally suspend the legal personality of the *Movimiento Semilla* Party cannot affect the second round of elections “without prejudice to the powers of criminal prosecution that fall under the jurisdiction of the Public Prosecutor’s Office”. On July 13, 2023, the Citizen Registry of the TSE indicated that it would not comply with the order issued by the criminal judge, based on the decision of the CC, and that it would file legal actions against the Public Prosecutor’s Office.

8. On July 20, 2023, an arrest warrant was issued against the Sub- Citizen Registry of the TSE for allegedly not having complied with the order to suspend the legal personality of the political party *Movimiento Semilla* and a new raid was carried out at the headquarters of the Citizen Registry, which included the removal of the work file of the sub-registrar by the Public Prosecutor’s Office. The TSE filed an appeal for protection of constitutional rights (*amparo*) on July 21, 2023 before the CC due to the threat of the diverse authorities. That same day, the Public Prosecutor’s Office raided the headquarters of *Movimiento Semilla* and detained five of its members in its headquarters, for which a judge had to appear after a writ of habeas corpus (*exhibición personal*) was filed in their favor, which they deem an act of intimidation, considering the excessive deployment of police. On July 22, 2023, the CC declared that the provisional appeal for protection of constitutional rights (*amparo*) requested by the TSE was not granted. On July 27, 2023, media reported on requests from the Public Prosecutor’s Office to the TSE requiring the name of all persons in charge of inputting the results to the Preliminary Electoral Results Transmission System (TREP) at national level.

9. It was reported that the *Movimiento Semilla* party and other social organizations have filed at least 22 complaints, appeals for protection of constitutional rights (*amparo*), and other legal actions in an attempt to cease the alleged political persecution. The *Movimiento Semilla* party reportedly attempted, on at least 20 occasions, to access the investigation file used against it, to no avail. In addition, the political party has filed at

least five legal actions within the judicial file to challenge the actions considered illegal by Judge Fredy Orellana, including a challenge, and these have been rejected in limine. It was noted that both the *Movimiento Semilla* party and various civil society actors have filed at least four complaints against prosecutor Rafael Curruchiche, as well as a request to remove him from the case against the party, however, none of the actions have prospered. It was reported that three direct requests have been submitted to the Supreme Court of Justice to cease the “persecution” against the party through a due process of the *amparo* granted by the CC on July 13, 2023. These have also been declared inadmissible.

10. Regarding *the situation of the members of the political party and the proposed beneficiaries*, it was reported that Cesar Bernardo Arévalo de León had been subject to surveillance, monitoring, smear campaigns, and death threats, which reportedly increased after the second round of elections on June 25, 2023. The applicants considered that some of the digital interventions constitute acts of threats, monitoring, and incitement to violence against the proposed beneficiaries that the State should be required to investigate into. They state that certain publications reportedly constitute illegal leaks of alleged reserved criminal proceedings, and that they reportedly originate from persons linked to the Public Prosecutor’s Office. In particular, the following publications on virtual platforms were highlighted in their regard, mainly Twitter/X:

- The netcenter account [Set of digital accounts connected directly or indirectly for the purpose of creating, manipulating or undoing the reputation of a public figure] called “Yes Master!” has repeatedly posted photographs or reports on his whereabouts.
- His photographs and personal information, including that of his family members, were used and published, and received homophobic, classist, sexist, and racist comments on them.
- On May 7, 2023, the netcenter account “Yes Master!” reportedly posted a photograph of the proposed beneficiary on a plane and reported that he was on a flight from the U.S. to Guatemala. These acts were reportedly published under the phrase “the ice cream cart” as a symbolic threat mechanism to announce acts of harassment and surveillance. Moreover, the proposed beneficiary was referred to as “kitty”.
- On June 27, 2023, on Twitter, “Yes, Master!” published account a photograph of the proposed beneficiary, taken without his consent, through which he revealed his location. Once again, he added the phrases “ice cream cart” and “nice Uruguayan kitty”.
- On July 1, 2023, the “Mazinger Z” account reportedly stated that the proposed beneficiary was allegedly in prison for the second round of elections.
- On July 9, 2023, the president of the Foundation against Terrorism (*Fundación contra el Terrorismo*, FCT) reportedly threatened to prosecute Mr. Arévalo de León criminally for “several serious crimes”. In addition, he published expressions such as “prisoner” and “fugitive” and accused him of having committed fraud.
- On July 14, 2023, the “Yes, Master!” account reportedly published his whereabouts along with Representative Samuel Pérez at the Electoral Crimes Prosecutor’s Office. It reportedly stated that it has the possibility to find out “what they went to do” insinuating that this “source” comes from said Prosecutor’s Office. The applicants considered it “a direct surveillance”, as well as a form of intimidation, since the person claimed to have informants within the Prosecutor’s Office.
- On July 20, 2023, the anonymous account called “An0nymous” published a tweet with images of the proposed beneficiary’s daughter and his wife, as well as sexist and homophobic expressions. These publications allegedly caused harassment and violence against his family members. The proposed beneficiary was also questioned about his daughter’s sexual orientation in presentations and formal interviews, thereby exposing her to insults and discrimination.
- On July 20, 2023, the “R’evoluZion” account reportedly published a photomontage in which it placed the proposed beneficiary in handcuffs and stated that he would be the next “prisoner”. Due to the link of this account with the Public Prosecutor’s Office, the applicants understand it as a threat of persecution.

- On July 26, 2023, the proposed beneficiary reported that he was unable to leave the country for fear that new arrest warrants be issued against members of the party in the following hours. The “Yes, Master!” account pointed out that these arrest warrants were due to a case which was being kept confidential. In addition, it mentioned that “the Kraken on a mission and seeking destruction”. This phrase is usually used to anticipate procedural acts, arrest warrants, or resolutions of the Judiciary, before these are public knowledge.
- On August 5, 2023, the Foundation against Terrorism reportedly placed several billboards stigmatizing the *Movimiento Semilla*, insinuating that, if Mr. Arévalo de León is elected, “Guatemala would adopt a system of government similar to that of Venezuela”. This is part of the discrediting campaign that seeks to stigmatize the party as “communist” and in turn encourage hate speech and violent actions against the proposed beneficiary.
- On August 5, 2023, the “Yes, Master!” account reportedly made a publication in which it posted a photograph of the proposed grantee along with Norma Torres, a U.S. Congresswoman of Guatemalan roots. In the publication, it warned that the proposed beneficiary “would soon have to self-exile in the United States”, which the applicants qualified as an intimidation. The applicants also consider it a threat that, even if he were to win the elections, he would not be allowed to take office as president of the country.
- On August 5, 2023, the account “Yes, Master!” posted a publication in which it delegitimized the electoral process and accused the TSE authorities of favoring the proposed beneficiary. In addition, it assured that the proposed beneficiaries would not be able to take office, thereby threatening that he would not be allowed to exercise his political rights.
- On August 9, 2023, after the assassination of the candidate for the presidency of Ecuador, Fernando Villavicencio, a supporter of the contending party reportedly commented on the news asking when it would be the “seedling’s” (referring to the proposed beneficiary) turn.
- On August 9, 2023, the anonymous account A.G.H. reportedly reposted the video of the assassination of Fernando Villavicencio and commented that it was “a good idea for Guatemala. He reportedly stated that it “the same thing that operated against the presidential candidate Fernando Villavicencio in Ecuador should operate against him”. According to the applicants, this would involve assassinating the proposed beneficiary.
- On August 11, 2023, the Foundation against Terrorism reportedly placed another billboard replicating “hate speech” against the proposed beneficiary. Furthermore, the other presidential candidate reportedly stated, in a political rally, that “all members of *Movimiento Semilla* are effeminate and a bunch of holes”, while the other members of the party applauded.
- On August 13, 2023, the media *Prensa Comunitaria* published a video in which a training of the prosecutors of the contending party is observed, in which they are told that “by superior directive” they must challenge all the polling stations in the second round of elections. The applicants consider that the purpose is to allegedly delay the officialization of the results, as occurred in the first electoral round. According to the applicants, the persons and institutions related to the contending party would therefore have time to promote actions to attempt to change or invalidate the electoral results.

11. It was alleged that there was an intense smear campaign with accusations of promoting communism, socialism, gender ideology, and expropriations, and of having constituted the party illegally. The applicants consider that, through the notion of “internal enemy”, stigmatization, persecution, and harassment were perpetrated against the proposed beneficiaries. It was indicated that the president of the Foundation against Terrorism, allegedly linked to the Public Prosecutor’s Office, insisted on spreading the fraud narrative. The applicants alluded to publications related to judicial persecution to the detriment of members of the

Movimiento Semilla, allegedly revealing confidential information about the investigation processes that not even the *Movimiento Semilla* party itself would have had access to, and alluding to their possible detention.⁵

12. On August 15, 2023, the applicants reported that the security team that works for the proposed beneficiary Arévalo de León received troubling information regarding a plan to assassinate him with the participation of state agents and private individuals. They alleged that at least three sources within state institutions, with a high degree of reliability, had warned about the existence of a plan called “Colosio”, referring to the assassination of the Mexican PRI candidate in 1994, which would be implemented to assassinate the proposed beneficiary. According to the applicants, these sources do not know each other. The security team reportedly has certain information about the referred plan since July 4, 2023. However, they were not able to corroborate the information through these sources before that time. They alleged that the proposed beneficiary was listed as a favorite in the voting polls.

13. On August 21, 2023, the applicants informed that, after the second round of elections, the presidential candidate of the political party *Movimiento Semilla* was elected. During the press conference held in a hotel in Guatemala City, four prosecutors from the Public Prosecutor’s Office reportedly appeared and requested a private meeting with the proposed beneficiary Arévalo de León. The minutes of August 20, 2023 of the Prosecutor’s Office against the Crime of Extortion indicate the following:

“we are present at the aforementioned location with the purpose of stating the following:

FIRST: In order to inform Mr. César Bernardo Arévalo de León, [...] that the Prosecutor’s Office against the Crime of Extortion, obtained privileged information, related to criminal gang structures, which may endanger the life and physical integrity of Mr. Arévalo de León, and therefore proceeded to issue the corresponding notification, so that he may take the security measures that he considers pertinent, also informing him that all of the above was also reported to the General Directorate of the National Civil Police.

SECOND: There being nothing else to be recorded, the present document is concluded at the same place and date of its beginning, half an hour after its beginning, which is read by the parties, who, being aware of its purpose, content, validity, and other legal effects, accept, ratify and sign it. [...]”

14. According to the applicants, this constitutes a second attempt against the proposed beneficiary. The applicants emphasize that the proposed beneficiary and his team were allegedly notified about the privileged information by public officials in their official capacity. According to them, this information proves the risks against the proposed beneficiary and the presidential formula as a whole. In view of the information received, they alleged a significant increase of the risk, as well as the imminence of the possible attack. The applicants added that the State had not deactivated the risks by means of an adequate investigation to determine those responsible for the plan. On the contrary, the State had merely indicated that it had not received any complaints, despite the fact that these are acts that should be prosecuted *ex officio*, and the State is aware of them.

⁵ In this regard, the applicant provided the following publications *inter alia*: on June 27, 2023, the Twitter account ¡Yes, Master! allegedly published information about the criminal case that the Prosecutor’s Office initiated against the party, despite the fact that it is confidential. Specifically, it published the ministerial folder number, the grounds of the case, and the names of the people who appeared with complaints within the case, among them members of *Semilla*. On July 12, 2023, the anonymous account “Yes, Master!” published confidential documents that appear as evidence in the criminal case against *Movimiento Semilla*. On July 18, 2023, the netcenter account, “Eriol” reportedly made public the documents on the arrest warrants against the *Movimiento Semilla* members, even shortly before their existence became public knowledge. On July 27, 2023, the account “Yes, Master!” reportedly published that a source from the Public Prosecutor’s Office revealed confidential information regarding new criminal cases to be initiated against *Movimiento Semilla* and the proposed beneficiary Samuel Pérez. The “Mazinger Z” account reportedly replicates the information that is published by netcenter accounts that report on procedural actions that have not been notified or are confidential.

15. Regarding *the protection measures implemented*, the applicants indicated that the State is reportedly providing security detail only in favor of the proposed beneficiaries as provided for in the electoral law. According to the law, the Secretariat of Administrative and Security Affairs (SAAS) is required to provide security to the presidential formula that advanced to the second round. They allege that the presidential formula has a limited contingent and have resorted to private security. The applicants considered that the State “has only limitedly reinforced the protection detail” in favor of the proposed beneficiaries “due to the distrust generated precisely by the fact that the entity in charge of protection may be colluding with entities that promote the political persecution” of these persons.

16. It was alleged that, although it is true that the State provides a security detail of 20 agents, these are reportedly distributed by shifts and there is not a permanent security detail. Furthermore, it was alleged that the proposed beneficiary normally travels in a borrowed vehicle, since the party does not have the funds to rent it, and that this vehicle has level 3 armor. This is allegedly below the level recommended by security experts for someone who faces his level of risk. Regarding Karin Herrera Aguilar, her vehicle was reportedly lent by a party sympathizer, since she does not have the necessary funds to rent or purchase a vehicle appropriate to the risk she currently faces. Given the allegations about plans to attempt against the life of the proposed beneficiary Arévalo de León, the security details are reportedly insufficient to deactivate high levels of risk and it is allegedly extremely urgent to reinforce them in view of these new events. Regarding the other persons of the *Movimiento Semilla*, it was indicated that they do not have any security measures in their favor.

B. Information provided by the State

17. The State considered that this request does not meet the procedural requirements. It also recalled the principles of complementarity and subsidiarity. They claim that no serious situation is evident and the allegations made by the applicants have been refuted. In addition, it considered that the proposed beneficiaries have security details assigned for their protection. Regarding the constitutional protection, it considered that it has been effective and that the second electoral round and political rights have been guaranteed.

18. Regarding *the current context of the general elections*, the State pointed out that after the elections were held on June 25, 2023, as scheduled and in peaceful conditions, a phase of challenges filed by some political parties through an appeal for constitutional rights (*amparo*) began. The *amparo* 3731-2023 was heard by the CC and in the provisional *amparo* it was ordered to hold hearings to review the scrutinies and collation of minutes of the results of the June 25, 2023 elections. Most of the Boards determined that the challenges did not proceed and the Departmental Electoral Board concluded on July 6, 2023, and the results remained unchanged. The presidential formula of the political party *Movimiento Semilla* obtained 11.77% of the votes and consequently passed to the second electoral round. Thus, the TSE declared the validity of the elections held on June 25, 2023 and made the results official. At the same time, the Public Prosecutor’s Office made a criminal case public.

19. Regarding *the ongoing criminal proceedings*, the State clarified that there is no political persecution in Guatemala, given that institutionality and democracy prevail. Regarding the functions of the Public Prosecutor’s Office, these include criminal prosecution for the possible commission of illegal acts, referring to the investigations opened against the *Movimiento Semilla*. The State indicated that it will not issue any pronouncement or position regarding the actions regarded as criminal indicated by the applicants. This is due to the fact that the legality of these actions is currently being evaluated by the jurisdictional bodies.

20. The State reported on the ongoing criminal investigations and on the request for provisional suspension of the legal personality of the *Movimiento Semilla*. In this regard, it clarified that the ongoing

criminal investigation is not against the presidential candidates of the *Movimiento Semilla* since they do not appear as accused parties, nor the elected candidates of the *Movimiento Semilla*. They do not appear as defendants or with a request for withdrawal of pre-trial in any criminal case. Therefore, they have not been given access to the file, as mentioned by the applicants, since they are not a party to the proceedings and the investigation is reserved to the parties in accordance with the law. On July 12, 2023, the Public Prosecutor's Office announced the existence of an ongoing criminal investigation related to irregularities detected in the procedure for the creation of the *Movimiento Semilla*, alluding to "the possible commission of the crime of money laundering or other assets".⁶ Within the framework of this process, the facts denounced were reported by the FECI to the TSE in May 2023.

21. Regarding the request for the provisional suspension of the legal personality of the *Movimiento Semilla* presented by the Public Prosecutor's Office, it clarified that it is made in accordance with the Law Against Organized Crime (*Ley Contra la Delincuencia Organizada*). The suspension contemplated in the aforementioned law is provisional, not definitive, for precautionary purposes of safeguarding an investigation into an organized group⁷. In any case, the Constitutional Court, benefiting the democratic exercise, resolved on July 13, 2023, that the electoral process will continue, "without prejudice of the criminal prosecution faculties of the Public Prosecutor's Office", therefore, the precautionary suspension did not become effective. The State also informed that the provisional suspension of the legal personality of the *Movimiento Semilla* is being clarified by the constitutional justice within an appeal for protection of constitutional rights (*amparo*) filed by the proposed beneficiary Arévalo de León for which a public hearing has been scheduled for August 24, 2023.

22. The State concluded that the jurisdictional bodies of the internal constitutional justice system are processing two appeals for the protection of constitutional rights (*amparo*) to hear the merits of the case on the procedural criminal procedure of the provisional suspension of the legal personality of the political party *Movimiento Semilla*, as a precautionary measure in the framework of the Law Against Organized Crime and that, within one of these processes, a provisional *amparo* has already been issued that categorically protects the electoral regime, the second round of elections, and the validity of its results. In addition, it recently informed that this process will not affect the political rights of any person as long as there are no final and enforceable judgments; that the proposed beneficiaries are not accused in this process and therefore there is no risk of suspension of their political rights, additionally that they enjoy the prerogative of pre-trial; and that on August 18, 2023, the Supreme Court of Justice in file 2297-2023 issued a decision in which it resolved to grant the protection of appeals for the protection of constitutional rights (*amparo*) requested by the political party *Movimiento Semilla*.⁸

23. The State indicated that Mr. Arévalo de León and Ms. Herrera Aguilar, who are the elected candidates of the political party *Movimiento Semilla*, reportedly have their political rights protected given that: a) the CC protected the legal personality of the political party against any criminal measure and guaranteed the holding of the second round and the effectiveness of the results; and b) Guatemala assumed formal commitments before the OAS that: (i) a second round will take place; (ii) this second round is between the winners of the first round; (iii) an open and transparent orderly transition process is available for them; (iv)

⁶ The Public Prosecutor's Office made public a criminal case to the general population and informed that: "[i]t was determined that possibly more than five thousand citizens had been illegally adhered to the political party *Movimiento Semilla*, by means of falsification of documents. In addition, at least 12 deceased persons have been registered in said political party". It also reported that *Movimiento Semilla* paid money in exchange for collected signatures, without knowing the source of financing. Regarding this investigation, the Public Prosecutor's Office stated: "None of the actions have the purpose of interfering in the date of the second round, nor to disqualify the participation of any candidate".

⁷ However, it also explained the difference with the suspension referred to in the Electoral and Political Parties Law, whose sanction is of an administrative nature and is applicable to the provision that states: "A party may not be suspended after the call for an election and until such election has been held".

⁸ As indicated in the mentioned resolution: "(...) this Court, watching over the purity of the electoral process, considers it pertinent to grant the constitutional guarantee of protection in order to give due compliance to the second round of elections in accordance with agreement 1328-2023 of the Supreme Electoral Tribunal [...]" which guarantees the second round of elections on Sunday, August 20.

that these transition agreements will conclude with the handover of power to whoever wins the second round next January 14, 2024. Furthermore, the presidential formula has been guaranteed passive suffrage, i.e. the right to vote and the right to be elected.

24. In relation to *the alleged smear, harassment and intimidation campaigns in digital media*, the State emphasized that no official account of any public institution has expressed an opinion on the proposed beneficiaries or on the *Movimiento Semilla*.

25. The State alleged that it is not enough to limit itself to the narration of the facts under the subjective perspective of the applicants. That the request includes 21 tweets, three from a citizen and 18 under anonymity. The first three concern photographs of billboards and a criticism of the ideology of *Movimiento Semilla*, consisting of the issuance of public opinions which being, within the freedom of expression, cannot be prosecuted or sanctioned by the State. Furthermore, it alleges that the citizen and the foundation they represent are part of the private sector and does not represent the State. Regarding the other 18 tweets, due to the anonymity, their senders and possible responsibilities cannot be identified without a formal investigation. In this regard, the State clarified that the proposed beneficiaries have not reported any threats or intimidation to the competent authorities in the current year. Therefore, it is reportedly not possible to analyze possible sequences of threats derived from their political exposure or their participation in the second round of elections, nor do they reflect the situation of persons who suffer real aggressions against them. The State also warned that proposed beneficiaries themselves have not considered that the publications on the Internet are serious enough to merit filing a complaint.

26. Regarding *the protection measures implemented in favor of the proposed beneficiaries*, the State indicated that, in accordance with the law, from the first day the results were made official by the TSE, both political parties were offered security, and only the *Movimiento Semilla* party accepted it. The Secretariat of Administrative and Security Affairs (SAAS) and the Ministry of the Interior are allegedly providing security measures to Cesar Bernardo Arévalo de León and Karin Herrera Aguilar. On July 13, 2023, the SAAS notified the presidential formula about the security detail at their disposal and, on that same date, both proposed beneficiaries agreed to receive the security detail being offered. They also allegedly proceeded to appoint Mr. Iván Carpio Alfaro, to coordinate all aspects related to the security detail to the aforementioned formula, and this was communicated to the SAAS facilities on July 14, 2023.

27. Regarding the composition of the security details, the State reported the following:

- The agents assigned to the presidential formula and those who integrate the work groups A and B, make a total of 20 Presidential Security Elements; who are graduates in Security Protection to officials duly equipped with their respective armament, simple and armored vehicles, as well as constant monitoring to opt for any support.
- An attached document from the SAAS dated August 18 states that the security detail granted on July 14, 2023 was composed of ten civilian agents of the Presidential Security (five for each group), as well as an armored car and a pick-up vehicle for each member of the binomial. The SAAS also indicated to work jointly with the Ministry of the Interior, coordinating PNC patrols for the service and perimeter security in the areas of the domicile of the proposed beneficiaries and in the public activities they attend.
- The State indicated that it is reportedly willing to meet requirements and requests regarding the safety of the proposed beneficiaries.
- It was reported that as of July 22, 2023, Police Station 13.3 La Rural implemented a fixed post from 7:00 p.m. to 7:00 a.m. at the residence of the proposed beneficiary Herrera Aguilar, with two National Civil Police officers in charge of security, guaranteeing the permanent protection of the proposed beneficiaries. For its part, SAAS indicated that to date no risk event has occurred. On July 29,

2023, a patrol car with its respective PNC agents was assigned to guard the residence of César Bernardo Arévalo de León.

28. On August 18, 2023, the State indicated that it had reinforced security measures following the international consternation at the events in Ecuador. In this regard, it reported on the following steps:

- By instructions of the President of Guatemala, on August 10, 2023, security was increased for both candidates, with the presidential candidate currently having one armored car, two pick-up vehicles and 16 security guards (8 per group); and the vice-presidential candidate one armored car, one pick-up vehicle and 12 security guards (6 per group);
- The Department for the Protection of Personalities of the Ministry of the Interior made arrangements for a fixed radio patrol at the candidates' residence at night and a mobile unit during the day, as well as a patrol of the Rapid Action Group (GAR) of the National Civil Police (PNC) during their tours;
- On August 12, 2023 the proposed beneficiary communicated by telephone with the Ministry of the Interior requesting increased security at a meeting to be held by the *Movimiento Semilla* party in the department of Huehuetenango, which immediately instructed the police commanders to provide the required security and to profile the people at the location, and the activity was carried out without any incident;
- On August 13, 2023, a police unit with agents of the Special Police Forces was assigned to accompany the presidential candidate of the *Movimiento Semilla* political party, in his security retinue in coordination with the security provided by the SAAS. In addition, a team of Special Forces of the National Civil Police is ready to provide security in all the activities carried out by the candidate in reference;
- An official letter was issued on August 14, 2023 to the proposed beneficiary by which it was reiterated that information related to persons, proselytizing acts, travel, locations, or any other activity where they consider it necessary to provide them with security measures. For this reason, a telephone number was provided to communicate directly with the Minister of the Interior or the Deputy Director General of Operations of the National Civil Police;
- The General Directorate of the National Civil Police, through the Deputy Director General of Operations, coordinated with Mr. Iván Carpio, head of security of César Bernardo Arévalo de León, to adopt relevant security measures to protect his physical integrity, among which is the requested support of 30 agents of the National Civil Police to reinforce security at the closing ceremony of the campaign that took place on Wednesday, August 16, 2023. This request was immediately attended to and a contingent of 300 elements of the National Civil Police was assigned to protect all those who attended the closing ceremony for the campaign and the massive affluence of sympathizers, as well as members of the party in reference;
- The headquarters of the *Movimiento Semilla* party in Guatemala City has perimeter security, as well as constant police patrols;
- The National Civil Police issued specific instructions at the national level to provide security for both presidential candidates during their campaign activities, in order to maintain public order and prevent criminal acts against the physical integrity of the people.

29. Regarding the rest of the members of the *Movimiento Semilla*, the Ministry of the Interior informed that it reportedly provides general security in political rallies and other activities. In this regard, it stated that on July 15, 2023, perimeter security was provided with foot patrols in favor of the proposed beneficiary Arévalo de León when he held a political rally. On this occasion, perimeter security was allegedly provided and prevention patrols were conducted in front of the headquarters of the political party in the department of Totonicapán. Also on July 28, 2023, the proposed beneficiary Arévalo de León visited several municipalities, for which constant patrols were carried out with police presence during the transportation and duration of stay of the *Semilla Movement's* delegation.

30. The State indicated that the proposed beneficiaries allegedly have an extensive personal security detail and the consent of the SAAS and the Ministry of the Interior to receive security requests and to respond to them if necessary. Therefore, it stated that, despite the fact that there is no determinable risk against the proposed beneficiaries, enhanced security measures have been deployed to protect their life and integrity without there being any situation that would merit the subsidiarity of the inter-American human rights system.

31. Regarding *the allegations referring to a plan to assassinate the proposed beneficiary or attempts on the life of the presidential candidates*, the State considered it incongruous that in a situation as serious as the one referred to by the applicants, no complaint had been filed in this regard. For its part, it reported that, after gathering official information and supporting documentation, the SAAS indicated that it has no knowledge of any plans being hatched against the lives of the proposed beneficiaries, since Mr. Iván Carpio - the formula's Security Coordinator - has not reported any threats. In addition, he also qualified as incongruent that the applicants indicates that this plan is known to the "security team" of the formula, and that on the other hand, the institution in charge of this security, which is the SAAS and the formula's Security Coordinator and trusted person, state that they are not aware of any plan of this nature. On the other hand, when asked if it is true that the security team had knowledge of a plan to attempt against the life of César Bernardo Arévalo de León and/or Karin Herrera Aguilar, the Ministry of the Interior answered: "*There is no knowledge of this information*".

32. The State indicated that the General Directorate of Civil Intelligence, based on the information gathered, had not obtained confirmed information on any "real threat" issued by groups or individuals against the presidential formula. Thus, the State considered that it had acted in prevention by gathering information through the SAAS, the MINGOB, and even the General Directorate of Civil Intelligence of the National Civil Police, ruling out the existence of plans of attempts against the life or integrity of the proposed beneficiaries. Nevertheless, security was reportedly reinforced to avoid any risk against the proposed beneficiaries. Taking into account the foregoing, the State considered that the alleged assassination plan indicated by the applicants is based only on their own statements and alleged unknown sources, which is not consistent with the information provided by the public institutions and trusted personnel of the *Movimiento Semilla* political party that directs and coordinates the security, nor with the information provided by civilian intelligence that has gathered information in this regard and has ruled out plans or attempts of this nature against the proposed beneficiaries. The State reiterated that the proposed beneficiaries have not appeared before the competent authorities to report any threats or intimidation in the current year.

33. Regarding *the complaints filed by the proposed beneficiaries*, the State indicated that the applicants did not present evidence of any complaints filed with the corresponding authorities, reporting the existence of intimidation, harassment, stalking, or following of the proposed beneficiaries. Therefore, it did not consider this to be consistent with a request regarding a situation of serious risk since, if this were the case, they would appear before the various institutions to report real events and concrete facts that endanger their life or integrity.⁹

III. CONTEXT APPLICABLE TO THIS REQUEST FOR PRECAUTIONARY MEASURES

⁹ The State indicated that the Judicial Branch was requested the judicial proceedings of the proposed beneficiaries Arévalo de León and Herrera Aguilar, to corroborate whether they appear as complainants for alleged acts of harassment, stalking, or being followed. Regarding Mr. Arévalo de León, he only appears as an applicant in the case where the alleged irregularities and falsifications in the documentation for the constitution of the political party *Movimiento Semilla* are being investigated, being that he requested access to the file. However, his request was not granted since he is not under investigation. Thus, it pointed out that Mr. Arévalo de León does not appear as a complainant in any criminal case related to the facts alleged in the request this year. Regarding the proposed beneficiary Herrera Aguilar, she does not appear as a complainant in any criminal case, especially any related to harassment and/or discrediting, according to the judicial processes sent by the Judicial Branch.

34. The Inter-American Commission has been observing in Guatemala “the intensification of harassment and criminalization against justice operators [...], human rights defenders and journalists, which was possible, among other reasons due to an apparent lack of independence of the Public Prosecutor’s Office”.¹⁰ The information received and analyzed by the monitoring carried out by the IACHR points to a “systematic failure of the State to comply with its obligation to combat impunity, attributable to a manifest lack of will”,¹¹ which led the Commission to place Guatemala in Chapter 4B of its Annual Report for two consecutive years (2021-2022).

35. In this regard, the IACHR warned of an intensification of judicial persecution and criminalization “with the aim of intimidating and removing from office justice operators responsible for the investigation and prosecution of cases related to the internal armed conflict [...] and high-impact or large-scale acts of corruption, aimed at favoring power structures and groups interested in ensuring impunity”.¹² According to what was observed, these “facts occur in a context of accusations about the lack of independence of the Public Prosecutor’s Office and its attorney general for its role in the judicial prosecution”.¹³ The IACHR expressed particular concern that this judicial persecution and lack of independence of the Public Prosecutor’s Office is framed in a climate of “threats, intimidation, harassment, and stigmatization campaigns”¹⁴ against justice operators. In this context, more than 30 justice operators left the country in exile and at least 11 members and former members of the Special Prosecutor’s Office against Impunity (FECI) have been arbitrarily deprived of their liberty.¹⁵ The Commission noted in its 2022 Annual Report that “the criminalization of prosecutors and judges with higher risk criminal jurisdiction, are allegedly part of the gradual process of co-optation of the bodies responsible for administering and imparting justice by power groups interested in perpetrating impunity and corruption since years ago in Guatemala”.¹⁶

36. On July 21, 2023, the IACHR expressed its concern about interference in the electoral process in Guatemala, in a context of lack of independence of the Public Prosecutor’s Office and its Attorney General.¹⁷ On March 3, 2023, the Commission called on the Guatemalan State to guarantee free and fair elections and urged “the competent judicial authorities that hear the appeals filed to guarantee political rights to act in accordance with the normative framework and Inter-American standards”.¹⁸ In addition, the European Union Electoral Observation Mission noted that 12% of the candidacies were excluded, almost double the value of the 2019 elections.¹⁹

37. The Commission noted that on July 12, 2023, the FECI announced the initiation of an investigation against the political party *Movimiento Semilla* for alleged falsification of signatures in the documentation presented for its incorporation. On the same day, at the request of the Public Prosecutor’s Office, the Seventh Court of First Criminal Instance ordered the TSE to provisionally suspend the registration of this party as a legal entity in order to prevent its members from “participating in any political act” or the awarding of positions.²⁰

¹⁰ IACHR. [Annual Report of the Inter-American Commission on Human Rights, 2022](#): approved by the Inter-American Commission on Human Rights on April 1, 2023 / 2022, Document OEA/Ser.L/V/II, Chapter 4.B. Guatemala, para. 2.

¹¹ Ibid, para. 7.

¹² Ibid, para. 8.

¹³ Ibid.

¹⁴ Ibid, para. 9.

¹⁵ Ibid, paras. 10 and 11.

¹⁶ Ibid, para. 13.

¹⁷ IACHR, Press Release 163/23. [IACHR urges the State of Guatemala to guarantee political participation in the general elections and to avoid undue interference](#). July 21, 2023.

¹⁸ IACHR. [Press Release 35/23: IACHR calls to guarantee free and fair elections in Guatemala](#). March 3, 2023.

¹⁹ European Union. [Preliminary Statement A well-organized election day in a process marked by the exclusion of candidates and invalid votes](#). June 27, 2023.

²⁰ IACHR, Press Release 163/23. [IACHR urges the State of Guatemala to guarantee political participation in the general elections and to avoid undue interference](#). July 21, 2023.

38. Along the same lines as the IACHR, the European Union Election Observation Mission noted, in June 2023, that the 2023 elections in Guatemala “are taking place in a context of serious deterioration of the rule of law and the independence of the judiciary, as well as severe restrictions on freedom of expression and press freedoms”²¹. Additionally, the Mission noted that “[s]ome political and electoral actors were subjected to intimidation, including death threats, but did not report most of these incidents for fear of reprisals or lack of confidence in an effective remedy. Questionable judicial actions eroded the rule of law and forced an increasing number of judges and journalists into exile for fear of persecution.”²²

39. Moreover, the Electoral Observation Mission of the Organization of American States (OAS-EOM) for Guatemala warned, in June 2023, of episodes of violence during the electoral process that resulted in four homicides and two attempted homicides of candidates for municipal elections.²³ Regarding this context of violence, in 2017, the IACHR stated that “it has been observing in Guatemala a scenario of violence, where most of the crimes are attributed to violence generated by criminal organizations, such as drug cartels and gangs or ‘maras’.”²⁴

40. The OAS Permanent Council has also monitored the situation in Guatemala closely, holding two specific sessions on the issue on July 26 and August 10, 2023.²⁵ Furthermore, the OAS Secretary General led a mission to Guatemala between August 1 and 4, 2023, in which he obtained the commitment “from all state powers that the second round will be held on August 20, and that the second round will be between the formula headed by Sandra Torres and Bernardo Arévalo”.²⁶ He also received the affirmation from the president of Guatemala, Alejandro Giammattei, that “I will hand over power on January 14 at the time determined by the Congress”. In this mission, the current president pointed out that it is said that “Arévalo will not be allowed to take office, but I will hand over power to him, in case the TSE says he won. The same goes for the candidate, Sandra Torres”.²⁷ On the other hand, he adds that both candidates have been offered security, especially when it was known that candidate Bernardo Arévalo could be in danger.²⁸

41. The mission led by the OAS Secretary General observed “excessive judicialization during electoral processes is common in Guatemala. It has been used in many cases to attack and intimidate. When this has occurred, it has been accompanied by a strong social media campaign, sometimes with violent messages for those threatened”. Regarding the TSE, he indicated that “[t]here was a juncture in which the Justice apparatus seemed to attack [it].” “[T]here are more than a dozen actions [against it] [...]. Whether it is the results transmission system, arrest warrants against officials, requests for election records, summons to testify, among other actions. The TSE cannot be under harassment, with more than a dozen accusations, all made during the first and second round of elections”²⁹.

²¹ European Union. [Preliminary Statement A well-organized election day in a process marked by the exclusion of candidates and invalid votes.](#) June 27, 2023.

²² Ibid.

²³ OAS. [MOE Preliminary Report. OAS presents recommendations for the second round of presidential elections in Guatemala and announces that it will observe the August election day.](#) June 27, 2023.

²⁴ IACHR. [Situation of human rights in Guatemala.](#) December 31, 2017, para. 362.

²⁵ OAS. [Special Session of the Permanent Council to Consider the Situation in Guatemala.](#) OEA/Ser.G CP/OD-2440/23 rev. 1. 26 July 2023; OAS. [Record of the special session to receive the report of the Secretary General of the Organization of American States on the situation in the Republic of Guatemala following his recent visit to that member state, held on August 10, 2023.](#) EA/Ser.G. CP/SA. 2442/23. 14 August 2023.

²⁶ OAS. [Report of the Secretary General of the Organization of American States, Luis Almagro, to the Permanent Council on the situation in the Republic of Guatemala.](#) after leading a Mission that visited the country between August 1 and 4, 2023, August 10, 2023.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

42. It also noted that “presidential campaigns have been marked by the actions of organized crime. While this election was less violent than others, organized crime is involved in elections at the national and local levels. It is concerned in all the immunity it can get”.³⁰ In its report, the Secretary General emphasized that the agreements of this mission include “that a period of orderly, open, and transparent transition is commenced for them. And that these transition agreements will culminate with the handover of power to whoever wins in the second round on January 14.”

43. On August 18, 2023, the OAS Electoral Observation Mission expressed concern “at yesterday’s announcement by the Special Prosecutor’s Office against Impunity (FECI) of the Public Prosecutor’s Office (MP, *Ministerio Público*) of a series of actions that persist in judicializing the electoral process in Guatemala”.³¹

44. On August 20, 2023, the second round of the presidential elections was held with a favorable result for the binomial composed by Bernardo Arévalo, according to the preliminary results of the TSE.³² President Giammattei congratulated Mr. Arévalo de León and extended an invitation to begin the transition of power after the results are certified.³³ In the same vein, the OAS Secretary General expressed his recognition to the elected President and Vice President,³⁴ as well as other representatives and authorities of different States and international organizations.³⁵

45. The OAS Electoral Observation Mission published, on August 22, 2023, its preliminary report on the second round of elections in Guatemala. The Mission characterized the 2023 elections as “one of the most complex episodes in the recent history of Guatemala”.³⁶ In that sense, the report details:

the seriousness of the situation that accompanied the electoral process. In multiple communiqués and official statements, the OAS expressed its concern about diverse aspects of the elections, from the uncertainty and tension surrounding the process of registration of candidacies in the pre-electoral stage, to the extreme judicialization of the results in the stage after June 25. The Mission strongly rejected the raids by the Public Prosecutor’s Office in the framework of the process, which it observed directly, and condemned “the political persecution of public officials and party activists by State entities, violating the minimum guarantees of citizens, ignoring the presumption of innocence and due process”. The OAS/EOM added that this “could constitute serious violations of fundamental rights enshrined in national legislation, the Constitution of the Republic and international instruments”.³⁷

46. The European Union Election Observation Mission, in its report of August 22, 2023, expressed similar statements:

The selectivity and timing of the actions taken between the two electoral rounds by the FECI and a criminal court of first instance against the TSE and *Semilla* suggest that they were intended to disrupt the electoral process and undermine the free expression of the will of the electorate. These actions were anticipated by X/Twitter accounts close to radical groups before they occurred, and disseminated information about the cases, suggesting leaks or collusion with these judicial institutions.³⁸

³⁰ Ibid.

³¹ OAS. [Press Release C-046/23](#). OAS Electoral Observation Mission expresses concern about the continuation of the judicialization process of the presidential elections in Guatemala. August 18, 2023.

³² TSE. [Preliminary Electoral Results 2023](#). Accessed on August 23, 2023.

³³ Alejandro Giammattei. [Post on Twitter](#). August 20, 2023.

³⁴ Luis Almagro. [Post on Twitter](#). August 20, 2023.

³⁵ For example: [Mexico](#), [Brazil](#), [Honduras](#), [Bolivia](#), [Argentina](#), [United States](#), [European Union](#).

³⁶ OAS. [Preliminary EOM Report. OAS Electoral Observation Mission congratulates the people of Guatemala for their civic commitment in the second round of elections](#). August 22, 2023, p. 1.

³⁷ Ibid, p. 1-2.

³⁸ European Union. [Preliminary statement of the EU EOM Guatemala, second round](#). August 22, 2023, p. 1.

47. In addition, the EU Mission noted “the artificial amplification and coordination of online messages by fake accounts and bot-driven activity by malicious actors to fuel campaign messages, accusations of fraud, disinformation, intimidation and subliminal threats against political opponents, as well as repeated accusations of interference against international election observers and organizations”³⁹.

48. Despite the challenges identified by both Electoral Observation Missions, they congratulate the Guatemalan people for their civic commitment to participate in peaceful elections.⁴⁰

49. Recently, on August 23, 2023, the OAS Electoral Observation Mission expressed “its concern for the new actions announced by the Public Prosecutor’s Office, requesting information from the Supreme Electoral Tribunal (TSE) about the members of the voting boards, members of the reviewers’ corps, coordinators of digitals and voting centers of the elections of June 25 and August 20”⁴¹. In this line, the Mission “[recalled] that the extreme judicialization of the process has placed democracy in Guatemala in a risk zone that the citizens of this country do not deserve”⁴².

IV. ANALYSIS OF THE ELEMENTS OF SEVERITY, URGENCY AND IRREPARABILITY

50. The precautionary measures mechanism is part of the Commission’s function of overseeing compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States. These general functions are set forth in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the Statute of the IACHR. Moreover, the precautionary measures mechanism is enshrined in Article 25 of the Rules of Procedure. In accordance with this Article, the IACHR grants precautionary measures in urgent and serious situations in which these measures are necessary to avoid irreparable harm to persons or to the subject matter of a petition or case before the organs of the inter-American system.

51. The Inter-American Commission and the Inter-American Court of Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have established repeatedly that precautionary and provisional measures have a dual nature, both protective and precautionary.⁴³ Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.⁴⁴ To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and the vulnerability to which the persons proposed as beneficiaries would be exposed if the measures are not adopted.⁴⁵ Regarding their precautionary nature, these measures have the purpose of preserving legal

³⁹ Ibid, p.7.

⁴⁰ See: OAS. [MOE Preliminary Report. OAS Electoral Observation Mission congratulates the people of Guatemala for their civic commitment in the second round of elections.](#) August 22, 2023; European Union. [EU EOM preliminary statement Guatemala, second round.](#) August 22, 2023.

⁴¹ OAS. Press Release C-047/23. [OAS Electoral Observation Mission in Guatemala remains attentive to the new judicial actions of the MP and calls to guarantee adequate conditions for the work of the TSE.](#) August 23, 2023.

⁴² Ibid.

⁴³ See in this regard: I/A Court H.R., Inter-American Court of Human Rights. [Case of the Yare I and Yare II Capital Region Penitentiary Center \(Yare Prison\).](#) Request for Provisional Measures presented by the IACHR regarding the Bolivarian Republic of Venezuela. Resolution of the Inter-American Court of Human Rights of March 30, 2006, Considerandum 5; I/A Court H.R., Case of Carpio Nicolle and others. [Case of Carpio Nicolle et al. v. Guatemala.](#) Provisional Measures. Judgment of July 6, 2009, Considerandum 16.

⁴⁴ See in this regard: I/A Court H.R., Case of El Rodeo I and El Rodeo II Capital Judicial Prison. [Case of the Internado Judicial Capital El Rodeo I and El Rodeo II.](#) Provisional Measures regarding Venezuela. Judgment of the Court of February 8, 2008, Considerandum 8; I/A Court H.R., Case of Bámaca Velásquez. [Bámaca Velásquez Case.](#) Provisional Measures regarding Guatemala. Judgment of the Court of January 27, 2009, Considerandum 45; I/A Court H.R., Case of Fernández Ortega et al. [Case of Fernández Ortega et al.](#) Provisional Measures regarding Mexico. Resolution of the Court of April 30, 2009, Considerandum 5; I/A Court H.R., Matter of Milagro Sala. [Milagro Sala Case.](#) Request for Provisional Measures regarding Argentina. Resolution of the Inter-American Court of Human Rights of November 23, 2017, recital 5.

⁴⁵ See in this regard: I/A Court H.R., Case of Milagro Sala. [Milagro Sala Case.](#) Request for Provisional Measures regarding Argentina. Resolution of the Inter-American Court of Human Rights of November 23, 2017, Considerandum 5; IACHR Court. [Matter of the Internado Judicial](#)

situations while under the consideration of the IACHR. They aim to safeguard the rights at risk until the request pending before the inter-American system is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures enable the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations.⁴⁶ In the process of reaching a decision, according to Article 25(2) of its Rules of Procedure, the Commission considers that:

- “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;
- “urgent situation” refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- “irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

52. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists.⁴⁷ Furthermore, the Commission emphasizes that the mechanism of precautionary measures is not called upon to determine the possible responsibility for the facts denounced. Likewise, neither does it correspond, in the present proceeding, to rule on violations of rights enshrined in the American Convention or other applicable instruments,⁴⁸ which is better suited to the System of Petitions and Cases. The analysis that follows refers exclusively to the requirements of Article 25 of the Rules of Procedure, which can be carried out without the need to enter into substantive assessments.⁴⁹

53. The Commission observes that the applicants have questioned the decisions of various State officials and bodies. In particular, the Commission notes that they have questioned the Judge of the Judiciary, officials of the FECCI, the Public Prosecutor’s Office of Guatemala, the Constitutional Court, the Supreme Court of Justice, among others. However, considering the nature of the allegations presented, the Commission

Capital El Rodeo I and El Rodeo II. Provisional Measures regarding Venezuela. Judgment of the Court of February 8, 2008, Considerandum 9; I/A Court H.R., Judgment of the Court of February 8, 2008, Considerandum 9; I/A Court H.R., Matter of the Plácido de Sá Carvalho Penal Institute. Provisional Measures regarding Brazil. Resolution of the Inter-American Court of Human Rights of February 13, 2017, recital 6.

⁴⁶ See in this regard: I/A Court H.R., Case of El Rodeo I and El Rodeo II Capital Judicial Prison. Case of the Internado Judicial Capital El Rodeo I and El Rodeo II. Provisional Measures regarding Venezuela. Judgment of the Court of February 8, 2008, Considerandum 7; I/A Court H.R., Case of “El Nacional” and “Así es Noticia” Newspapers. Case of “El Nacional” and “Así es la Noticia” Newspapers. Provisional Measures regarding Venezuela. Order of the Court of November 25, 2008, Considerandum 23; I/A Court H.R., Case of Luis Uzcátegui. Case of Luis Uzcátegui. Provisional Measures regarding Venezuela. Judgment of the Court of January 27, 2009, Considerandum 19.

⁴⁷ See in this regard: I/A Court H.R., Inter-American Court of Human Rights. Case of the Inhabitants of the Communities of the Miskitu Indigenous People of the Northern Caribbean Coast Region regarding Nicaragua. Extension of Provisional Measures. Resolution of the Inter-American Court of Human Rights of August 23, 2018, Considerandum 13; IACHR Court. Matter of children and adolescents deprived of liberty in the “Complexo do Tatuapé” of Fundação CASA. Request for extension of provisional measures. Provisional Measures regarding Brazil. Resolution of the Inter-American Court of Human Rights of July 4, 2006, Considerandum 23.

⁴⁸ IACHR. Resolution 2/2015. Precautionary Measures No. 455-13. Matter of Nestora Salgado regarding Mexico. January 28, 2015, para. 14; IACHR. Resolution 37/2021. Precautionary Measures No. 96/21. Gustavo Adolfo Mendoza Beteta and family regarding Nicaragua. April 30, 2021, para. 33.

⁴⁹ In this regard, the Court has indicated that it “cannot, in a provisional measure, consider the merits of any relevant argument other than those that are strictly related to extreme gravity, urgency and the need to avoid irreparable harm to persons. See in this regard: I/A Court H.R. James et al. v. Trinidad and Tobago. Provisional Measures. Resolution of the Inter-American Court of Human Rights of August 29, 1998, Considerandum 6; I/A Court H.R., Case of the Barrios Family v. Venezuela. Case of the Barrios Family v. Venezuela. Provisional Measures. Resolution of the Inter-American Court of Human Rights of April 22, 2021, Considerandum 2.

understands that they fundamentally require an assessment of the merits that exceeds this precautionary proceeding. If these allegations are presented in the framework of a petition or case, the Commission may analyze them in the light of the American Convention and the applicable standards, given that the requirements for doing so are fulfilled.

54. Moreover, although precautionary measures were requested for a broad universe of persons, the Commission notes that the same detail of information was not provided for all of them, which is relevant when analyzing the alleged situation in light of Article 25 of its Rules of Procedure. Consequently, upon analyzing the information provided, the Commission understands that it is focused on the current situation of Cesar Bernardo Arévalo de León and Karin Herrera Aguilar in Guatemala, with respect to whom it will analyze the procedural requirements in light of the context Guatemala is experiencing.

55. When analyzing the procedural requirements, Article 25(6) of its Rules of Procedure establishes that the Commission “shall take into account” the context of the request. In this regard, the Commission takes into account that the situation in Guatemala has been monitored by the Commission, the political bodies of the OAS and electoral missions, such as those of the OAS and the European Union. Observing all the public pronouncements issued by these bodies, the Commission understands that there is a deep concern about the situation in the country. In particular, the Commission expressed its concern about the rule of law in the country and the lack of independence of the Public Prosecutor’s Office. The Commission also warns that, according to the OAS Electoral Observation Mission, Guatemala’s 2023 elections represent one of the “most complex” episodes in Guatemala’s history.

56. When assessing compliance with procedural requirements, the Commission believes that the context monitored and the situation of the proposed beneficiaries reflect a situation of exceptional concern, considering the potential impact on the country’s democracy.

57. Regarding the requirement of *seriousness*, the Commission considers that it has been met. At the time of making this assessment, the Commission understands that Mr. Cesar Bernardo Arévalo de León and Ms. Karin Herrera Aguilar, according to preliminary reports by the TSE of Guatemala,⁵⁰ represent the winning presidential formula for the 2023 general elections in Guatemala, and in view of the recognition they have received within the OAS and from other States. In addition, given the current context of the country, they are the most visible persons to have been voted as the formula to occupy the highest political positions in the country chosen in the August 2023 elections. This places them not only in a condition of exceptional exposure but also differentiated with respect to the rest of the members of the political party they are part of.

58. Based on the information reported by the applicants, the Commission observes that the threats recorded are framed in a context in which it has been alleged that there are stigmatizing messages, intimidation, and threats, mainly attributable to “netcenters” and other users. In particular, the Commission notes the information provided by the applicants indicating profiles on social networks that have repeatedly published the location of the proposed beneficiary and private family information by publicly displaying photographs of the proposed beneficiary and his family. The Commission notes with particular concern that after the assassination of the Ecuadorian presidential candidate Fernando Villavicencio, expressions such as: “this would be a good idea for Guatemala”, “when is it the “seedling’s turn” and “the same thing that operated against the presidential candidate Fernando Villavicencio in Ecuador should operate against him” were used. The Commission understands that these reports are consistent with what has been affirmed by the Secretary General of the OAS after his recent visit to the country, and the Electoral Mission of the European Union that

⁵⁰ Superior Electoral Tribunal of Guatemala. Resultados Electorales Preliminares 2023, accessed August 23, 2023. Available at [GTM 2023 Second Election \(trep.gt\)](https://www.trep.gob.gt/).

observed that, in addition to the context of excessive judicialization, there is a reported “strong campaign in social media, sometimes with violent messages for those threatened”.

59. The Commission recognizes that, as presidential candidates, the presidential formula has voluntarily exposed themselves to public scrutiny and the right to freedom of expression protects even critical or disturbing speech by citizens,⁵¹ who have the legitimate right *ab initio* to criticize their candidates as long as they do not engage in speech not protected by Article 13(5) of the ACHR. Therefore, the Inter-American Court, when evaluating the granting of provisional measures in the *Cases of Bámaca Velásquez, Maritza Urrutia, Plan de Sánchez Massacre, Chitay Nech et al, Río Negro Massacres, and Gudiel Álvarez et al (“Diario Militar”) v. Guatemala*, has emphasized that certain messages on social networks that may be considered harassment, along with other elements, cannot be analyzed in isolation, but must be considered “as a whole”.⁵² In the Commission’s opinion, such assessments contextually situate the expressions in question so that they can be used to assess the seriousness of the situation.

60. In the matter at hand, although the State indicated that these allegations have not been denounced domestically, the Commission notes that the situation of the proposed beneficiaries has not been limited to the existence of these messages on digital platforms, but are inserted in the context in which there is at least one plan against their life and personal integrity.

61. Furthermore, the Commission considers that the negative effects of coordinated behaviors in social networks that appeal to intimidation, discredit, harassment, and threats can, and sometimes must, be counteracted in the public debate with institutional messages of protection and support that must be added to the timely deployment of protection and investigation mechanisms and support of the rule of law to the affected person or public official.

62. As indicated, the Commission notes that, according to the applicants, there are two plans that seek to undermine the proposed beneficiary:

- The first was reported before the second round of elections and they attribute it to state agents and private individuals, which is said to be called the “Colosio” Plan. The applicants indicated that such information comes from sources of state institutions with a high degree of reliability.
- The second was reported by the Prosecutor’s Office against the Crime of Extortion on August 20, 2023, after the results of the second round of elections. According to the Prosecutor’s Office report it would be attributable to “criminal gang structures”.

63. According to the information available, the Commission observes that the State questioned the existence of the first plan, as it was not reported internally. It also indicated that, after an internal review with the security of the proposed beneficiary and various State entities, including the General Directorate of Civil Intelligence and the National Police, it was confirmed that there was no “real threat” against the proposed beneficiary. In any case, the State detailed and highlighted the various protection measures it has offered and provided to the proposed beneficiaries, according to internal regulations, and considering reinforcements over time.

⁵¹ For example, I/A Court H.R., Case of Ricardo Canese v. Paraguay. Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111. para. 103; IACHR. Inter-American Juridical Framework on the Right to Freedom of Expression. 2010, para. 11.

⁵² IACHR Court. Cases of Bámaca Velásquez, Maritza Urrutia, Plan de Sánchez Massacre, Chitay Nech et al, Río Negro Massacres, and Gudiel Álvarez et al (“Diario Militar”) v. Guatemala. Provisional Measures and Supervision of Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of November 22, 2022. Considering 35.

64. In light of the State's statements, and in light of the information provided on August 21, 2023 by the applicants, the Commission considers as an extremely serious element that the Prosecutor's Office against the Crime of Extortion informed the proposed beneficiary on the evening of August 20, 2023 concerning the existence of "privileged information" that reportedly indicates that "criminal gang structures" could put the life and physical integrity of the proposed beneficiary at risk. There is no evidence that the prosecutors have provided information to address the situation or the measures they are adopting to mitigate it. In addition, the Attorney General's Office informed that it informed the General Directorate of the National Civil Police of this information.

65. The Commission does not have elements to indicate from what date the Attorney General's Office had knowledge of this information, nor does it have any elements to know when the General Directorate of the National Civil Police was informed about it. However, the available information reflects, in the opinion of this Commission, the existence of intentions of criminal structures that would seek to attempt against the proposed beneficiary, in the terms formally informed by the Prosecutor's Office against the Crime of Extortion. As has occurred previously, the Commission seriously and carefully evaluates this type of allegations, which has motivated the granting of precautionary measures in favor of public officials in Guatemala, such as the *Thelma Esperanza Aldana Hernández Case (then Attorney General of Guatemala)*⁵³, the *Augusto Jordán Rodas Andrade Case (then Human Rights Prosecutor of Guatemala)*⁵⁴ and the *Miguel Ángel Gálvez Case (then Judge of High Risk Proceedings of Guatemala)*.⁵⁵

66. In this regard, the allegations regarding the implementation of the security detail for the proposed beneficiaries are of particular concern. In this regard, the Commission notes that the proposed beneficiaries have resorted to private security, given the existing distrust of State entities in the current context. Moreover, they have indicated that the agents are reportedly distributed in shifts and are not permanently within the security detail. They also reported that the proposed beneficiary normally travels in a vehicle with a level 3 armor, which is below the level recommended by security experts for a person in his situation, which should be a vehicle with level 7 armor. In general, the applicants considered that there was a reinforcement, although "limited".

67. The Commission is also concerned that the State authorities, upon becoming aware of the risk, have not provided timely information on the measures available to address the alleged situation. Nor has the State established effective coordination measures at the inter-institutional level aimed at promoting a security plan to reinforce the protection measures in favor of the proposed beneficiaries, given the new information reported by the State itself. Instead, the Commission notes that the Prosecutor General's Office limited itself to "making the corresponding notification for [the proposed beneficiary] to take the security measures it considered pertinent," without ensuring whether the necessary adjustments to the protection detail was effectively implemented in accordance with the alleged level of risk. In this regard, the Commission observes that, despite the above situation, there is no knowledge of any plan to reinforce the security details after learning of the intention of criminal structures against the lives of the proposed beneficiaries, even when the State authorities themselves learned of one of the attacks at first hand. In this sense, the Commission considers that it is necessary to not only reevaluate the level of risk for the reinforcement of the current security detail, but also offer inter-institutional coordination spaces so that the competent authorities, in use of their powers and competences, can internally manage the corresponding adjustments.

68. In this regard, the Commission recalls that in the Matter of *Luna Lopez v. Honduras*, the Court stated that "[...] it is the responsibility of the State authorities who become aware of a situation of special risk to identify or assess whether the person subject to threats and harassment requires protection measures or to

⁵³ IACHR, [Resolution 40/2016](#) of July 22, 2016. *Case of Thelma Esperanza Aldana Hernández and family regarding Guatemala*.

⁵⁴ IACHR, [Press Release, October 27, 2017](#). *Case of Augusto Jordán Rodas Andrade and his next of kin regarding Guatemala*.

⁵⁵ IACHR, [Resolution 45/2016](#) of August 21, 2016. *Case of Miguel Ángel Gálvez and family regarding Guatemala*.

refer the matter to the competent authority to do so, as well as to provide the person at risk with timely information on the measures available. [...] and cannot be restricted to the victim herself requesting it to “the competent authorities”, nor to knowing exactly which authority is best able to address her situation, since it is up to the State to establish coordination measures among its entities and officials for this purpose [...].”⁵⁶

69. In addition to the foregoing, the Commission notes that it was not informed about the opening of investigative proceedings on the alleged facts or, lacking that, about their status and progress. The Commission also has no knowledge of the way in which this “privileged information” was obtained or under which open investigation it was obtained. This takes into account that it was the same officials of the Attorney General’s Office, the State body in charge of prosecuting criminal acts, who had knowledge of the possible commission of a crime against the proposed beneficiary. The Commission emphasizes that the investigation of facts that give rise to a risk situation is a means of mitigating the identified risk, allowing the identification and eventual punishment of those responsible for the threats.⁵⁷

70. The Commission is particularly concerned given the nature and seriousness of what has been reported, and therefore considers that there is a particularly serious situation and aggravation of the situation initially reported, including knowledge of, at least, a plan to attempt against the life of the proposed beneficiary or the presidential formula. These events are particularly serious insofar as they could be associated to the profile of the proposed beneficiaries within the electoral context. In any case, the Commission understands that, as a whole, they reportedly continuously seek to intimidate them in the framework of their political activities.

71. In view of the foregoing, taking into account the specific particularities of the matter at hand, and in light of the *prima facie* assessment criterion of the precautionary measures mechanism, the Commission considers that the rights of Mr. Cesar Bernardo Arévalo de León are at serious risk. Furthermore, the Commission considers that Ms. Karin Herrera Aguilar could be at risk, given that she is part of the presidential formula of the political party *Movimiento Semilla*, and could be subject to reprisals given her link to the proposed beneficiary, either due to their political relevance or on the basis of the joint trips they make.

72. The Commission makes the above assessment, considering that the security of the proposed beneficiaries has become fragile and concerning. In addition to what has been reported, Mr. Arévalo de León and Ms. Herrera Aguilar are currently president and vice-president, according to preliminary reports from the TSE, and in these capacities represent the highest political mandate in the country. In this sense, the Commission considers that the degree of protection provided through the security details must be considered light of the risk factors to which the proposed beneficiaries are exposed given their current profile, alleged situation, and current context.

73. As for the requirement of *urgency*, the Commission considers that it has been met, after analyzing the tenor of the messages received, as well as the information on, at least, a possible plan against the life and integrity of the proposed beneficiaries, which was formally notified by members of the Public Prosecutor’s Office, and lacking any information on the actions taken to address it, in addition to the questions raised regarding the protection details in their favor, allows this Commission to understand the imminent possibility that a violation of their rights may be executed in the current context of the country.

74. Regarding the requirement of *irreparable harm*, the Commission considers that it has been met, to the extent that the potential impact on the rights to life and personal integrity constitutes, by its very

⁵⁶ I/A Court H.R., *Case of Luna Lopez v. Honduras*. Judgment of October 10, 2013 (Merits, Reparations and Costs). Considerandum 127.

⁵⁷ The Inter-American Court has stated that “impunity encourages the repetition of human rights violations. I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 100.

nature, the maximum situation of irreparability. Should the situation of irreparability materialize, the Commission considers that the rights of the persons who voted for the proposed beneficiaries in the last general elections in the country would be collaterally affected.

75. Lastly, with respect to the group of proposed beneficiaries not included in this resolution, the Commission recalls that, in the terms of Article 1(1) of the American Convention, the State must respect and guarantee their rights regardless of the granting of precautionary measures. Should new events occur, or should updated and detailed information on their situation become available, the applicants may request precautionary measures in favor of these persons, in accordance with Article 25 of the Rules of Procedure, if it deems it appropriate.

76. With regard to the State's arguments in relation to the principle of complementarity, the Commission considers it pertinent to recall that this principle informs the inter-American system as a whole, in that international jurisdiction is "adjuvant" to national jurisdictions, without replacing them.⁵⁸ The Commission considers, however, that the invocation of the principle of complementarity as a basis for considering that the adoption of precautionary measures is not appropriate, presupposes that the State concerned satisfies the burden of proof that the applicants are not in the situation established in Article 25 of the Rules of Procedure, in view of the fact that the measures adopted by the State itself have had a substantive impact on the reduction or mitigation of the situation of risk, in such a way that it is not possible to assess a situation that meets the requirement of seriousness and urgency that precisely require international intervention to prevent irreparable damage.⁵⁹

77. In the matter at hand, the Commission notes that, according to the documentary support presented, the notification about the existence of "privileged information" related to criminal gang structures that put Mr. Arévalo de León's life and physical integrity at risk, comes from the Prosecutor's Office, which also indicated that it had already informed the National Civil Police. Considering the above, and after making the corresponding assessments in this resolution, the Commission considered that the requirements of Article 25 of the Rules of Procedure have been met.

V. BENEFICIARIES

78. The Commission declares Cesar Bernardo Arévalo de León and Karin Herrera Aguilar, who are duly identified in the present proceeding, as beneficiaries of the precautionary measures.

VI. DECISION

79. The Inter-American Commission considers that the present case meets *prima facie* the requirements of seriousness, urgency and irreparability contained in Article 25 of its Rules of Procedure. Consequently, it requests that Guatemala:

- a) adopt the necessary measures to protect the rights to life and personal integrity of Cesar Bernardo Arévalo de León and Karin Herrera Aguilar in light of the assessments of this resolution;

⁵⁸ See *inter alia*: IACHR, *Francisco Javier Barraza Gómez regarding Mexico* (MC-209-14), Resolution of August 15, 2017, para. 22. Available at <http://www.oas.org/es/cidh/decisiones/cautelares.asp>; IACHR, *Paulina Mateo Chic regarding Guatemala* (MC 782-17), Resolution of December 1, 2017, para. 34; Available at <http://www.oas.org/es/cidh/decisiones/pdf/2017/49-17MC782-17-GU.pdf>; and IACHR, *Santiago Maldonado regarding Argentina* (MC 564-2017), Resolution of August 22, 2017, para. 16. Available at <http://www.oas.org/es/cidh/decisiones/pdf/2017/32-17MC564-17-AR.pdf>.

⁵⁹ *Ibidem*

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- b) consult and agree upon the measures to be adopted with the beneficiaries and their representatives; and
 - c) report on the actions taken to investigate the alleged facts that gave rise to the adoption of this precautionary measure, so as to prevent them from reoccurring.

80. The Commission requests the State of Guatemala to report, within 15 days from the day following notification of this resolution, on the adoption of the precautionary measures requested and to update this information on a regular basis.

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

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

83. Approved on August 24, 2023, by Margarete May Macaulay, President; Esmeralda Arosemena de Troitiño, First Vice-President; Roberta Clarke, Second Vice-President; Julissa Mantilla Falcón; and Carlos Bernal Pulido, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary