

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 12/2021**

Precautionary Measure No. 1051-20

**34 identified members of the digital newspaper “El Faro” regarding El Salvador**

February 4, 2021

Original: Spanish

**I. INTRODUCTION**

1. On November 6, 2020, the Inter-American Commission on Human Rights (“the Inter-American Commission,” “the Commission,” or “the IACHR”) received a request for precautionary measures filed by the Due Process of Law Foundation (DPLF) and the Center for Justice and International Law (CEJIL) (“the applicants”), urging the Commission to request that the State of El Salvador (“El Salvador” or “the State”) adopt the necessary measures to protect the rights of 34 members<sup>1</sup> of the digital newspaper “El Faro” (“the proposed beneficiaries”). According to the request, the persons proposed as beneficiaries are being subjected to threats, harassment, intimidation, as well as criminalization and stigmatization by high government authorities, as a result of their journalistic work.

2. On November 16, 2020, the Commission requested information from both parties, in accordance with Article 25.5 of the Rules of Procedure. The State presented its report on November 23, 2020. Upon having been granted a timeline extension, it submitted a report on December 4, 2020. For their part, the applicants provided additional information and observations on November 23 and December 5, 2020.

3. Upon analyzing the information available, in light of the applicable context, the Commission considers that the information provided shows *prima facie* that the rights to life and personal integrity of the 34 identified members of the digital newspaper “El Faro” are in a serious and urgent situation. Consequently, in accordance with Article 25 of the Rules of Procedure, the Commission requests 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.

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

**1. Information provided by the applicants**

4. The digital newspaper “El Faro” provides coverage on issues related to corruption, violence, organized crime, migration, culture, inequality, impunity and human rights, overseeing both the state authorities and the different economic and social spheres of El Salvador and Central America. For this reason, the newspaper allegedly plays a fundamental role in current debates in the Salvadoran society, maintaining a critical position and no party affiliation, becoming a benchmark for independent, transparent and reliable journalism.

<sup>1</sup> (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.

5. The applicants alleged that President Nayid Bukele (“the President”) had purportedly promoted a smear and stigmatization campaign against independent media, including “El Faro.” In particular, they noted that journalists from the identified media outlet have been subjected to constant stigmatization, harassment, criminalization and threats from the government. Moreover, they indicated that the new government began a gradual process of imposing a news blackout on “El Faro,” excluding its members from interviews and from the question lists, especially at the President’s press conferences. On September 6, 2019, the first act of “explicit censorship” against “El Faro” took place when officers from the Presidential House prevented the journalists of this media outlet from accessing one of the President’s press conferences, arguing that they had misbehaved at a previous conference. In October 2019, the President, from his Twitter account, accused the newspaper “El Faro” and its journalists of publishing “fake news” upon the publication of a report on the failure to meet the deadlines for the construction of a bridge over river Torola.

6. Upon such events, threats were made, mostly through social media. In particular, the applicants indicated that in the case of journalist V.G., she had allegedly been threatened repeatedly by various followers of the President, who made threats of physical violence and death against her as a result of a report she had published. Regarding journalist N.R., they note that he was purportedly subjected to death threats and insults through social media upon his participation in a press conference in May 2020. According to the information provided, journalist N.R. was allegedly told that:

“I want to go back to El Salvador so badly and shoot you 3 times in the head so you stop being a fool.” Moreover, they had allegedly included personal data of his family in the messages.

7. In the case of journalist G.L., it was indicated that upon his participation in a presidential press conference, he was a victim of a campaign to discredit him, and of insults and slanderous messages. Additionally, images deriding the journalist were spread. The messages stated:

“We already know the truth, you are rapists and traffickers, you will pay for your crimes yourselves, as well as *Siman*, you crooked people.”

“Another GARRULOUS PERSON from “[EL] FARO”, who still haven’t assimilated that they are RAPISTS, money launderers and crooked.”

8. Regarding journalist J.A., he was allegedly a victim of insults through messages after his participation in a press conference with the President. According to the applicants, the President himself redistributed one of these messages.

9. According to the information provided, threats to set fire to the newspaper’s headquarters were allegedly made through an anonymous Twitter account in September 2020. On September 28, 2020, someone requested the planting of a car bomb against the journalists of “El Faro” through his Facebook account. Faced with such threats, on September 30, 2020, the legal representation of “El Faro” proceeded to report them to the District Attorney’s Office and requested that criminal action be brought for the possible commission of crime justification and the public incitement of terrorism, among other crimes. It was stated that no protection measures have been implemented.

10. Several of the journalists of “El Faro” have reportedly suffered from surveillance and monitoring. In particular, they alleged that on July 7, 2020, a vehicle parked near the offices of “El Faro” was detected from 8:40 am to 2:10 pm. The following day, the same vehicle was parked in the same place at 6:30 a.m. and stayed there most of the day. As reported by two sources close to the media outlet, the vehicle was assigned to an employee of the Intelligence Agency (OIE). Similarly, on July 21 and August 3, 2020, a

vehicle without license plates allegedly prowled, insistently, in front of the residence of J.A.,<sup>2</sup> journalist of “El Faro.” He was also reportedly digitally harassed after participating in the President’s press conferences.

11. Similarly, on September 9, 2020, journalist E.L. reported observing a man recording a video of his house. That same day, journalist O.M. reported on a vehicle parked in front of his house. Subsequently, that vehicle began to follow him when he left his house. On October 12, 2020, a van with four men on board stopped next to Mr. J.M.D., columnist and collaborator of “El Faro,” while he was walking his pet. Two armed men got out of the van and ordered him to throw himself to the ground. Nonetheless, Mr. J.M.D. threw his phone at them, thinking it was an assault, and fled the scene. According to the applicants, this attack was organized by the government as an attempt to intimidate his brothers C.M. and O.M., both journalists of “El Faro.”

12. Additionally, the representatives referred to the possibility of wiretapping of two members of the team as they did research for an article on alleged negotiations between the government and the MS-13 gangs. They added that three days prior to the publication of that article, the President allegedly started a strong discrediting campaign where he referred to “El Faro” as “garbage” and “violines” (a slang term for sexual abusers), also accusing them of setting up “a smoke curtain.” On September 4, 2020, according to the applicants, the president made the following remarks on his social media:

- “Not one speck of trust for that outlet should be left”, as well as threats to finish “unmasking the violines.”

13. Moreover, an official within the President’s circle of trust directly threatened “El Faro” stating that:

- “They are playing with fire.”

14. In its communication of July 2, 2020, the “La Página” newspaper<sup>3</sup> reportedly published an article where C.M., a journalist from “El Faro” was accused, allegedly without evidence, of having sexually assaulted his couple in 2017. The article was quoted and replied to by high-ranking authorities of the State in social media, publicly requesting that the Attorney General open an investigation. In addition to this, the Director of the National Civil Police publicly accused “El Faro” of covering up the crime of sexual assault. On July 3, 2020, “El Faro” disproved the accusations and on July 18, the female journalist identified as victim of said assault issued a statement denying the story of “La Página,” denouncing that she was never interviewed by that newspaper and that she was the victim of manipulation for political purposes. On the other hand, the Prosecutor’s Office started a second case against journalist C.M. for alleged procedural fraud and concealment.

15. Subsequently, according to the applicants, high authorities of the State have held a constant campaign repeatedly referring to the journalists of “El Faro” as “criminals,” “rapists” or “*violines*.” In the case of journalist C.M., it was alleged that he is the victim of a constant harassment campaign on social media as well as being made to look like a criminal, which becomes worse every time that he participates in an investigation questioning the activities of the Executive Power.

16. On July 20, 2020, the Attorney General’s Office opened a new investigation related to an audit on

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<sup>2</sup> According to the applicants, journalist J.A. is responsible for several publications that reveal possible cases of corruption in contract awarding during the COVID-19 emergency.

<sup>3</sup> As indicated, it is a media outlet operated by the National Council for the Administration of Assets, a public entity controlled by the Executive Branch.

the accountancy records of “El Faro” for years 2014, 2016, 2017 and 2018 by the Department of Criminal Investigation and Tax Regulations of the Ministry of Finance. The applicants referred to a series of abuses and irregularities by the Ministry of Finance against “El Faro,” which is why several appeals were filed regarding the audits carried out. On September 11, 2020, they filed an Appeal for Protection of Constitutional Rights before the Constitutional Chamber in favor of “El Faro”, stating that the Executive Power was abusing its powers and committing misuse of power. However, they have not received a response to this date.

17. On another note, the representatives reported that on September 23, 2020, a team of journalists from “El Faro” formally appeared to testify before the Special Commission of the Legislative Assembly, created to investigate attacks on the press by the current government. According to the representatives’ allegations, as the team was in the hearing, the President used his Twitter account to comment on said Commission and the newspaper. According to the request, the post stated:

- “What could the deputies be investigating at “El Faro”? Ah, I forgot that now they are their favorite digital outlet”.

18. According to this same request, the President publicly stated that the Ministry of Finance was investigating “El Faro” for money laundering. The applicants consider that such statements are a response to their investigation work and their critical stance towards the current government, which has in turn led a constant campaign of attacks and smearing in response to their publications. The applicants pointed out that on September 24, 2020, the President accused “El Faro” of lying in its publications while on a nationwide television broadcast, all without presenting any proof.

19. According to the applicants, the authorities have extensively used social and other media under their control to spread their messages, which is in turn replicated by other users. In particular, they highlighted that the government has used a nationwide television broadcast to advertise the fact that “El Faro” was being investigated for crimes of money laundering and tax evasion while showing pictures of the founder and president of the newspaper, journalist C.D. The applicants considered that the attacks against the journalists of “El Faro” have also intensified since the publication of two investigations that point at the government for alleged corruption in fund management and negotiations with gangs.

20. On November 23, 2020, the applicants stated that on November 11, 2020, the President started a thread on his Twitter account, once again questioning the funding of “El Faro” and other independent media. For these reasons, they reiterate the relationship between these public statements and the audit of the newspaper by the Ministry of Finance. The messages were followed by third parties who, according to the applicants, stated: “pay your taxes you crybabies”, “you damned liars the day will come when you will not even have money to pay your internet bills” “you liars, trash, cesspit of sold-off journalism”. Other messages highlighted by the applicants contain the following:

- “Get ready for next year, you won’t have that bunch of crooked people defending you in the legislative clique, that bunch of mobsters will leave forever just like you”
- “next year we will see that they shut down your sad little outlet”
- “Keep on posting trash you only have 99 days left you damn rapists”
- “you’re already SCREWED, the mafia on power will be gone next year and THEY WON’T PROTECT YOU FROM JUSTICE ANYMORE!”
- “NO MATTER WHAT YOU PUBLISH, WE WILL KICK YOU OUT AND YOU KNOW IT”, “YOUR PARTY WILL BE OVER SOON”

21. On November 12, 2020, the Legislative Assembly published the final report of the Special Commission. In this report, it is concluded, among other issues, that there is harassment, discrimination

and mistreatment of journalists by the Executive Branch in El Salvador, as well as use of public resources to attack journalists and opposition of the current government. The report also states that the President and several of his high officials are the main actors behind the systematic attacks against the press through social networks, using official accounts of the Executive Branch (Twitter, Facebook) to harass, to discredit, discredit and threaten journalists, who are in turn followed by “fanatics following the government” who then continue the attacks in anonymity. For this reason, the Assembly recommended that the President and his staff cease the harassment, discrimination, insults, and mistreatment of journalists.

22. On December 5, 2020, the applicants stated that on November 24, 2020, “El Faro” received a communication<sup>4</sup> from the Prosecutor of the Unit for Crimes Relating to Life and Physical Integrity of the Prosecutor General’s Office (FGR), who had been put in charge of the investigation proceedings against the acts of harassment, violence and threats against the journalists and newspaper employees, derived from the request for precautionary measures. Moreover, the Prosecutor requested that they contact the Prosecution Unit to coordinate the logistics to interview the proposed beneficiaries and gain access to videos recording the incident where a vehicle parked near the offices of “El Faro” between July 7 and 8 of 2020.

23. The spokesperson of “El Faro” responded to the communication of the FGR on November 27, 2020, stating that the interviews could be carried out and how they could be summoned for it. In addition, the spokesperson expressed concern on the delayed response by the Public Prosecutor’s Office to the events denounced, since it was not until the notification of the present request for precautionary measures before the IACHR that the State started investigations and concerned itself with the situation of the employees of the newspaper. The applicants considered the approach of the Prosecutor’s Office to be “positive”.

24. Regarding the audit of the accounts of “El Faro” by the Ministry of Finance, the applicants alleged that the repeated refusals of the Ministry, reinforces their concerns regarding the selective and malicious nature of such inspection since the State still has not explained why this audit outweighs others previously made against the newspaper and the taxation area. Hence, they consider that the lack of information and the exhaustive nature could be an action of harassment and legal persecution against “El Faro” in retaliation for its journalistic labor.

25. On December 31, 2020, after a post in the “El Faro” Twitter account, various users responded with attacks and accusations suggesting that the information was false, questioning the financing of the journal and accusing its members of being sexual abusers. They also referred to messages that contained threats<sup>5</sup>, such as:

- “Next year we will make you disappear too”
- “They are playing with fire and when they least expect it, boom!” The next news will be: “journalist is found wrapped in sheets with a sign saying (tattletale) like when started killing them 8 years ago and they started whining”.

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<sup>4</sup> In that communication, the Prosecutor requested, within 24 hours, that he be provided with a certified copy of the newspaper’s workforce in order to guarantee that the request for precautionary measures is extensive for all employees, as well as a certified copy of their work records in order to summon them to conduct interviews for they to state how the acts of harassment, violence and threats occurred; as well as more information regarding whether they could recognize the perpetrators, the license plates of the vehicles, as well as report whether the acts of harassment have continued.

<sup>5</sup> According to the information available, the messages also included: “The only thing I wish is that the President, when all this is cleared up, will sue them for defamation and make them apologize publicly”; “This kind of statements and accusations will take a really high toll... It’s only a matter of time...”

26. Applicants consider that these types of messages show the risk level for the proposed beneficiaries, fostering a hostile environment created by the President and his ministers. Finally, the applicants recall that on December 3, 2020, the IACHR held a virtual public hearing on the situation of freedom of expression and press in the country. A team of “El Faro” attended this virtual event. They emphasize that during said hearing, various users started posting messages against “El Faro” on its Facebook page, claiming that it spread false news, accusing them of being “corrupt,” “concealers”, and justifying the government’s actions not as an attack on freedom of expression but a defense against the slander by the newspaper.

## **2. Response from the State**

27. The State considered that it is not possible to identify a situation involving imminent risk or danger of harm to the right to security or personal integrity of the proposed beneficiaries. On December 1, 2020, the State argued that although freedom of expression enjoys very broad protection, it is not absolute. Therefore, the Constitution of the Republic establishes certain limits in its Article 6 including public order, morals, honor and the private life of others, which must be observed as part of the ethical and professional responsibility of the journalists.

28. The State, regarding the allegations of an alleged stigmatization and attacks by the government over the journalistic work of the proposed beneficiaries, made a statement on the recommendations of the Inter-American Court and the context of El Salvador. The State highlighted that the Inter-American Court has indicated that “in a context of vulnerability faced by certain persons, declarations by the authorities may be perceived as threats and cause a frightening effect; and that, when evaluating an alleged restriction or limitation to freedom of expression, the Court should not be subjected to the study of the act in question but should also examine said act in light of the facts of the case as a whole, including the circumstances and the context in which they were presented.”

29. The State pointed out that it is currently in a pre-electoral context, which stresses the importance of what was previously indicated by the Court. For the State, although journalists are protected under the protection of freedom of expression, they must exercise their work obeying the principles of responsible journalism, that is, act in good faith, provide accurate and reliable information, reflect the opinions of those involved in public debate with objectivity and refrain from falling into sensationalism. Along these lines, the State declared that it rejects any claims of it impeding journalistic work in El Salvador and that there is a solid institutional framework and specific competences derived from the constitutional mandate conferred on the Attorney General’s Office for the investigation of criminal acts that could constitute an attack against the free exercise of journalism.

30. Regarding the process of auditing against “El Faro,” the State clarified that the power for evaluation corresponding to the Ministry of Finance is related to the fulfillment of the formal and substantive obligations that are inherent to the fulfillment of tax legislation. The exercise of this power is independent of the subject to whom it is addressed. The State declared to be against the comments referring to the audit as arbitrary and targeted, as the results of said audit were still pending, in accordance with the legal parameters.<sup>6</sup> On this matter, the State warned that the tax auditing process does not fall on the proposed beneficiaries but on the taxpayer identified as TRIPODE S.A. de C.V. in order to determine whether it has complied with its tax obligations.

31. On December 4, 2020, the State indicated that the Attorney General’s Office claimed not to have had knowledge of the specific actions mentioned in the request for precautionary measures prior to the

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<sup>6</sup> The State attached a report dated November 23, 2020, signed by the Director General of Internal Taxes of the Ministry of Finance, through which it forwards its observations regarding the audit in question.

corresponding notification. It alleged that there are no records that any of the journalists or employees of the digital newspaper “El Faro” appeared to file a claim regarding the events pertaining to their request. However, based on the notice communication sent to the Foreign Ministry, the Attorney General’s Office, through the Unit for Crimes related to Life and Physical Integrity of the Public Prosecutor’s Office of San Salvador, opened a dossier to investigate the alleged facts in the aforementioned request. In addition to the above, the Attorney General’s Office recorded that the legal representative of the newspaper recently appeared before said institution to file a claim regarding a post made on social media against “El Faro”.

32. Afterwards, the Computer Crimes Investigation Unit opened a file for the crime of threats against the newspaper, also forwarding functional management to the National Civil Police to carry out investigative proceedings regarding the aforementioned crime. The Attorney General’s Office also stated that, given the framework of knowledge of the facts alleged by the applicants of these measures and the provisions of the Special Law for the Protection of Victims and Witnesses, they made immediate contact with the newspaper’s staff in order to assess and start the proceedings to obtain protection measures in favor of the applicants with the Victims and Witnesses Protection Program.

33. Moreover, the State also reported that the National Police had carried out a technical search of the publication with threatening content against the newspaper. To this date, screenshots made by a Facebook user named “Neto Rivera” were found. Said screenshots have also been replicated by other users, but the original post has not been found. The technical search also found that after the post with threatening content, the user identified as “Neto Rivera” changed his name to “Moris Castillo”, keeping the same URL and profile picture. Currently, they are waiting for information from Facebook to help determine the identity of the person. Based on the foregoing, the State confirmed that the facts alleged by the applicants for these measures are already known by the competent authorities who have started investigations.

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

34. The mechanism of precautionary measures is part of the Commission’s function of supervising compliance with the human rights obligations established in Article 106 of the Charter of the Organization of American States (“OAS”), based on Article 41 (b) of the American Convention on Human Rights (“American Convention”) and Article 18 (b) of the Statute of the IACHR. Moreover, the mechanism of precautionary measures is described in Article 25 of the Rules of Procedure, according to which the Commission grants precautionary measures in situations that are serious and urgent, where they are necessary to prevent irreparable harm.

35. 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, one being protective and the other being precautionary. Regarding the protective nature, the measures seek to avoid irreparable damage and preserve the exercise of human rights, while the precautionary aspect is intended to preserve a legal situation while the organs of the Inter-American System are considering a petition or case. Their object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid any infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary or provisional measures allow the State concerned to fulfill the final decision and, if necessary, to comply with the required reparations. For such purposes, in accordance with 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.

36. 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.<sup>7</sup>

37. As a preliminary issue, the Commission also recalls that, by its own mandate, it is not called upon to determine criminal liabilities in the context of the facts reported. Moreover, it is not appropriate, in the present proceeding, to rule on violations of rights enshrined in the American Convention or in applicable standards.<sup>8</sup> Regarding the internal processes reported by the parties of different nature (criminal, administrative, or tax), the Commission wishes to indicate that the analysis of such allegations necessarily requires a assessment that is substantive or on the merits, in light of the American Convention and the applicable standards.<sup>9</sup> In any case, it is noted that the applicants have filed an appeal for protection of constitutional rights (*amparo*) before the Constitutional Chamber, which must follow its due process (*see supra* para. 16).

38. In this sense, the Commission wishes to clarify that the analysis performed hereinbelow is exclusively related to the requirements of seriousness, urgency and risk of irreparable harm set forth in Article 25 of its Rules of Procedure, which can be resolved without making any determinations on the merits, which belong to a petition or case.

39. As indicated in Article 25.6 of the Rules of Procedure, when carrying out that analysis, the Commission shall take into account the context in which the alleged facts are framed. In this regard, the Commission notes that, following the *on-site* visit to El Salvador in December 2019, information was received regarding a series of concerns in the environment regarding guarantees for the exercise of freedom of expression. Among the concerns, various actors mentioned a stigmatizing discourse on social networks against human rights defenders, the media, and journalists<sup>10</sup>. On that occasion, the IACHR indicated that, although it is legitimate for public officers to formulate criticisms, corrections, or objections

<sup>7</sup> In this regard, for instance, referring to the provisional measures, the Inter-American Court has considered that such standard requires a minimum of detail and information that allow for a *prima facie* assessment of the urgent situation of risk. IACHR, *Matter of the children and adolescents deprived of their liberty in the “Complexo do Tatuapé” of the Fundação CASA*. Request for extension of provisional measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23. Available [in Spanish] at [http://www.corteidh.or.cr/docs/medidas/febem\\_se\\_03.pdf](http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf)

<sup>8</sup> In the same way, the IACHR wishes to indicate that it is not called upon, in this procedure, to qualify or determine the existence of “censorship” against the beneficiaries, which would require an analysis on the merits in the terms indicated by the Inter-American Court. As the Inter-American Court has also indicated, for instance, in the *Matter of María Lourdes Afiuni in Venezuela*, those allegations regarding a ruling on censorship in the terms of Article 13 of the Convention, requires an assessment of the merits of the case, which exceeds the nature of the precautionary measures mechanism. In this regard, in the aforementioned matter, the Inter-American Court indicated that “it is not possible to distinguish between what corresponds to the character and nature of the provisional measures ordered and what is appropriate to be resolved as part of the merits of the petition.” The Court recalled that, given the nature of the measures, “it is not possible to take into account any argument other than those that are strictly related to the extreme seriousness, urgency and need to avoid irreparable harm to persons.” Available at I/A Court H.R. *Matter of María Lourdes Afiuni regarding Venezuela*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 2, 2011. Considerandum 10.

<sup>9</sup> In this vein, for instance, in the *Matter of Adrián Meléndez Quijano in El Salvador*, the I/A Court H.R. dismissed the provisional measures requested by the representatives of a case where they requested that the Court ruled on allegedly arbitrary criminal and administrative proceedings. The Court indicated that “the adoption of the requested measures could imply an early trial by ancillary proceedings,” since it would not be possible that the analysis of the situation presented did not constitute “a ruling on the merits.” Available at I/A Court H.R. *Matter of Adrián Meléndez Quijano et al. regarding El Salvador*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 26, 2007, considerandum 10.

<sup>10</sup> See in this regard: IACHR presents its preliminary observations following its in loco visit to El Salvador, December 27, 2019. Available at [http://www.oas.org/en/iachr/media\\_center/PReleases/2019/335.asp](http://www.oas.org/en/iachr/media_center/PReleases/2019/335.asp)



regarding specific reports in the media and social organizations, they must comply with a special duty of care so as not to create situations involving risk<sup>11</sup>.

40. In 2020, the proposed beneficiaries' representation reported that the Special Commission of the Legislative Assembly of El Salvador issued, on November 12, 2020, a report on harassment, discrimination and mistreatment targeting journalists by the current government and its high authorities (*vid supra* para. 21). As part of the preparation of that report, a delegation of journalists from "El Faro" had the opportunity to testify (*see supra* para. 17).

41. Moreover, the IACHR held a Public Hearing on the *Situation of freedom of expression in El Salvador* on December 3, 2020, in which a delegation from "El Faro" also participated (*see supra* para. 26). On that occasion, they reported on attacks against journalists; restrictions for the exercise of their profession; limitations for access to press conferences and inability to ask questions; smear and insulting campaigns on social networks, especially towards women journalists; among other practices<sup>12</sup>. On that occasion, in addition to ruling on the legal framework, the State particularly recognized the important role played by the media in a democratic society<sup>13</sup>.

42. Proceeding with the analysis of the requirements in the framework of the previous context, and particularly around the seriousness requirement, the Commission identifies that the journalists who are members of the digital media outlet "El Faro," an independent media outlet, work on various issues relevant to their country as well as the Central American region (*see supra* para. 4).

43. In this context, 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.

44. As a proof of the seriousness of the events faced by the members of that digital media outlet in El Salvador, the applicants mainly reported: i) messages with threats of aggression or death through third-party social networks, such as, "put three bullets in your head" (May 2020), set fire to the newspaper's headquarters (September 2020), or the placing of "a car bomb" against journalists from "El Faro" (September 2020), "the next year we will disappear him" (December 2020), "when they least expect it boom!" (December 2020), among others; ii) disqualifying messages, by various media, with the following tenor: "garbage," "criminals," "traffickers," "mafioso," "sewer of sold journalism," "corrupt," "rapists" and "violins"; iii) publication of family data, in the case of certain journalists; iv) monitoring at the "El Faro" offices for certain periods of time, which was presumably carried out by the State Intelligence Agency (July 2020); v) presence of vehicles without license plates near the residence of a journalist (August 2020); tracking the movement of a journalist by an unidentified vehicle (September 2020); vi) video recording

<sup>11</sup> *Ibidem*

<sup>12</sup> See in this regard: IACHR, Annex Press Release 311/20, 178 Period of Sessions, 2020, p. 3. Available [in Spanish] at <http://www.oas.org/es/cidh/prensa/comunicados/2020/311A.pdf>

<sup>13</sup> *Ibidem*

of the home of a journalist (September 2020); and vii) presence of armed persons while a relative -also a collaborator of “El Faro”- carried out his daily activities (October 2020).

45. Such alleged facts, assessed as a whole, reveal the existence of various risk factors faced by the proposed beneficiaries in El Salvador. For instance, it is noted that persons who are not unknown or identified purportedly have knowledge of the homes of journalists, and reportedly even track their movements not relating to their journalistic activities. Moreover, the tenor of the messages received, through various media, mainly social networks, would make visible an intention to intimidate journalists so that they limit their activities in the current context. Of special concern are those messages from third parties that call to attack the proposed beneficiaries and the headquarters of “El Faro,” given that there have already been follow-ups by unknown persons and personal information has been revealed in the case of a journalist.

46. Furthermore, taking into account what was indicated by the applicants and the nature of the information, the Commission recalls that in the *Matter of Residents of the Communities of the Miskitu Indigenous People of the North Caribbean Coast Region*, the Court found that, in certain contexts, the threatening publications in social networks and the alleged public statements by government officers calling to discredit the work of defenders -and in this case journalists- can put them at serious risk, particularly with regard to their life or personal integrity<sup>14</sup>. The Commission also recalls that the factors alleged in this matter coincide with certain risk factors that were analyzed in 2017 at the time of granting precautionary measures to journalists from “Revista Factum.” At that time, the IACHR analyzed that they were subjected to threats and harassment, allegedly in retaliation for the exercise of their freedom of expression in matters of public interest<sup>15</sup>.

47. Upon requesting information from the State, the Commission takes note of what has been indicated regarding the pre-electoral context, the institutional framework of the country, and, in particular, the actions taken by the Prosecutor’s Office (*Fiscalía*) of El Salvador to address the situation of the proposed beneficiaries, which was described by applicants as “positive.” Regarding the issue of context, except from the fact that the applicants mentioned it, the Commission does not have sufficient elements to explain or understand how the “pre-electoral context” indicated by the State impacts on the mitigation of the specific situation of risk claimed by the applicants.

48. Even though the filing of a complaint to the Prosecutor’s Office by the proposed beneficiaries has been a matter of dispute, the Commission notes that the State has taken action upon learning of the facts alleged in this request. Thus, it is observed that, in November 2020, the State contacted the proposed beneficiaries to proceed with the relevant investigations and corresponding proceedings before the Victim and Witness Protection Program. However, the information available suggests that to date the proposed beneficiaries still do not have protection measures in their favor, despite the seriousness of the alleged facts and their continuity over time. As measures have not been implemented, it is not possible to analyze their suitability and effectiveness in mitigating the alleged situation of risk. Regarding the investigations, it is observed that a Facebook user profile has been identified from where threatening content is purportedly published, and from which other users allegedly repost. However, the Commission stresses that proceedings are pending and that the persons behind the user profile, or others, have not yet been identified. This is relevant with a view to analyzing the measures adopted to prevent the alleged events from reoccurring.

<sup>14</sup> I/A Court H.R. *Matter of Inhabitants of the communities of the Miskitu indigenous people of the North Caribbean Coast Region of Nicaragua*. Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23, 2018. Considerandum 11. Available at [https://www.corteidh.or.cr/docs/medidas/miskitu\\_se\\_05.pdf](https://www.corteidh.or.cr/docs/medidas/miskitu_se_05.pdf)

<sup>15</sup> IACHR, Resolution 43/2017. PM 678-17. Journalists from “Revista Factum” regarding El Salvador, October 27, 2017. Available at <http://www.oas.org/es/cidh/decisiones/pdf/2017/43-17mc678-17-es.pdf>

49. In summary, in light of the analysis carried out, the Commission deems that the situation of the identified members of the digital newspaper “El Faro” is sufficient to consider that their rights are *prima facie* in a serious situation. When assessing such seriousness, the Commission has taken into account that such alleged harassment, intimidation, threats and stigmatization are reportedly closely related to the exercise of their freedom of expression in matters of public interest to their country.

50. Regarding the urgency requirement, the IACHR notes that, according to the State, the competent authorities are carrying out the corresponding proceedings in order to assess and process before the Victim and Witness Protection Program the granting of protection measures to the proposed beneficiaries. In connection with this, the Commission observes that, despite what the state authorities have indicated, the proposed beneficiaries do not have protection measures or security schemes to date. In this sense, the Commission considers that, upon analyzing the nature of the alleged facts, as well as the lack of protection measures, the proposed beneficiaries are likely to suffer the coming to fruition of the risk faced in the near future, by continuing with their journalistic and investigative activities in the digital newspaper “El Faro.” In this sense, the Commission considers that the immediate adoption of protective measures is necessary.

51. As it pertains to the requirement of irreparable harm, the Commission finds that it is met, since the possible impact on the rights to life and personal integrity constitutes the maximum situation of irreparability. The Commission especially takes into account the importance of protecting such rights, which are essential for the members of the digital newspaper “El Faro” to exercise their right to freedom of expression independently, free from threats, harassment, intimidation and stigmatization.

#### **IV. BENEFICIARIES**

52. The Commission declares that the beneficiaries of this precautionary measure are the following members of “El Faro,” who are duly identified in this proceeding under the terms of Article 25: (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..

#### **V. DECISION**

53. The Inter-American Commission on Human Rights considers that this matter meets *prima facie* the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests 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.

54. The Commission also requests that the Government of El Salvador kindly inform the Commission, within a period of 15 days, as from the date of this resolution, on the adoption of the precautionary measures that have been agreed upon and to periodically update this information.

55. The Commission stresses that, pursuant to Article 25(8) of the Commission's Rules of Procedure, the granting of precautionary measures and their adoption by the State do not constitute a prejudgment regarding the possible violation of the rights protected in the American Convention and other applicable instruments.

56. The Commission instructs its Secretariat to notify this resolution to the State of El Salvador and the representatives.

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

María Claudia Pulido  
Acting Executive Secretary