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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 104/2021**

Precautionary Measure No. 153-11  
X and Z regarding Jamaica<sup>1</sup>  
December 19<sup>th</sup>, 2021  
Original: Spanish

**I. SUMMARY**

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in favor of X and Y in Jamaica. At the time of making the decision, the Commission analyzed the information provided by the State during the time the precautionary measures were in force, as well as the observations of the beneficiaries' representation. Following the requests to lift the measures made by the State and given the lack of information provided by the representation, who submitted information for the last time in 2014, the IACHR decided to lift these measures.

**II. BACKGROUND INFORMATION**

2. On September 21, 2011, the IACHR granted precautionary measures to X and Z, in Jamaica. Their representation was Maurice Tomlinson. It was alleged that X and Z were subjected to aggressions, threats, and harassment, due to their sexual orientation. The Commission considered that the situation presenting a risk met the requirements of Article 25 of its Rules of Procedure and requested that the State of Jamaica: a) adopt the necessary measures to guarantee the life and integrity of the beneficiaries; 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 events that led to the adoption of the precautionary measures.<sup>2</sup>

**III. INFORMATION PROVIDED DURING THE TIME THE MEASURES WERE IN FORCE**

3. Throughout the time the precautionary measures have been in force, the Commission has followed-up on the situation that is the subject matter of this resolution through the request for information from the parties. On October 14, 2011, the Commission requested information from the parties. On May 3, 2013, the Commission again requested updated information from the parties. On June 3, 2013, the State presented its report. The representation submitted information on July 3 and 13, and on August 8, 2013. On December 6, 2013, the Commission forwarded the information received to the State. On January 13, 2014, the State submitted a report. On January 24, 2014, the Commission forwarded the State's response to the representation. On February 22, 2014, the representation furnished its response. On February 26, 2014, the Commission requested information. On April 16, 2021, the Commission requested that the representation provide updated information on the beneficiaries' situation. The IACHR informed the representation that it would assess whether these precautionary measures should remain in force. The representation did not respond.

4. The State has requested the lifting of these precautionary measures since 2013.

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<sup>1</sup> In accordance with Article 17(2)(a) of the IACHR Rules of Procedure, Commissioner Margarette May Macaulay, a Jamaican national, did not participate in the debate and deliberation of this matter.

<sup>2</sup> IACHR. Precautionary measures 2011. Available [in Spanish] at <https://www.oas.org/es/CIDH/decisiones/MC/cautelares.asp?Year=2011&Country=JAM>

#### **A. Information provided by the State**

5. On June 3, 2013, the State reported that police records show that there are three reports of attacks against one of the beneficiaries, and therefore, investigations have been launched into each of the reports. However, the investigators stated that beneficiary X did not want to continue with the investigations. In addition, the police reports indicate that they do not have the beneficiary's statement, even though investigators wanted to contact the beneficiary, without success. The State reportedly tried to contact the beneficiaries or their representatives, without success. The State indicated that it did not know the whereabouts of the beneficiaries. Lastly, the State requested the lifting of the precautionary measures.

6. On January 13, 2014, the State indicated that the Jamaica Police Force had tried to provide assistance to one of the beneficiaries but that these attempts had been rejected. The police reported that the inspector met with one of the beneficiaries in February 2012, and the meeting was held following several attempts to communicate with the beneficiary. At that meeting, the beneficiary informed the inspector that he had no intention of continuing with the investigations into the attacks against him and that he did not want the police to be around him. Furthermore, the beneficiary reportedly refused to give the police inspector a contact number. The inspector reportedly communicated, via e-mail, with the representative, who purportedly informed him that he is residing in Canada and did not have information on the beneficiaries. Lastly, the State reiterated its request to have the measures lifted, specifying that Z is living abroad.

#### **B. Information provided by the representation**

7. In July and August 2013, the representation indicated that a violent situation was taking place against the LGBTI community in Jamaica. On July 13, 2013, the representation reported that the beneficiaries reduced their participation in the movement for the LGTBI community. On August 8, 2013, it was stated that X had been waiting for a year for the inspector to contact him. The beneficiary reportedly implemented expensive and complicated security protocols to ensure his own safety. Z is said to have left the country temporarily.

8. On February 22, 2014, the representation reported that beneficiary X did not reject the help from the police. It was indicated that the beneficiary has lodged several complaints with the police and that on all those occasions he has provided the police with his contact information. The beneficiary allegedly refused to have a police escort due to the high visibility to which he would have been exposed. It was indicated that the representation sent an e-mail to the inspector on August 8, 2013. It was also indicated that the number of the beneficiary was provided. Finally, Z was still abroad.

9. Having asked him for updated information in 2021 and informed him that it would be analyzed whether these precautionary measures should remain in force, the representation did not send a response, and the deadlines granted have expired.

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

10. 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 oversight functions are established in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the IACHR Statute. The mechanism of precautionary measures is set forth in Article 25 of the Commission's Rules of Procedure. In accordance

with that Article, the Commission grants precautionary measures in serious and urgent 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.

11. The Inter-American Commission and the Inter-American Court of Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have repeatedly established that precautionary and provisional measures have a dual nature, both protective and precautionary.<sup>3</sup> Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.<sup>4</sup> To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and the vulnerability to which the persons proposed as beneficiaries would be exposed if the measures are not adopted.<sup>5</sup> Regarding their precautionary nature, these measures have the purpose of preserving a legal situation while under consideration by the organs of the inter-American system. The precautionary nature aims at safeguarding the rights at risk until the petition 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 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. In the process of reaching a decision, according to Article 25(2) of its Rules of Procedure, the Commission considers that:

- a. “serious situation” refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the inter-American system;
- b. “urgent situation” refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c. “irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

12. With respect to the foregoing, Article 25(7) of the Commission’s Rules of Procedure establishes that “the decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions.” Article 25(9) establishes that “the Commission shall evaluate periodically, at its own initiative or at the request of either party, whether to maintain, modify or lift the precautionary measures in force.” In this regard, the Commission should evaluate if the serious and urgent situation and possible irreparable harm that caused the adoption of the precautionary measures persist. Moreover, the Commission shall consider whether new situations have subsequently arisen that might meet the requirements set forth in Article 25 of the Rules of Procedure.

13. Similarly, while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, keeping such measures in force requires a more

<sup>3</sup> See in this regard: I/A Court H.R. [Matter of the Yare I and Yare II Capital Region Penitentiary Center](#). Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela, Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. [Case of Carpio Nicolle et al. v. Guatemala](#) Precautionary Measures, Order of July 6, 2009, considerandum 16.

<sup>4</sup> See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela, Order of the Court of February 8, 2008, considerandum 8; I/A Court H.R. [Case of Bámaca Velásquez](#). Provisional measures regarding Guatemala, Order of the Court of January 27, 2009, considerandum 45; I/A Court H.R. [Case of Fernández Ortega et al.](#) Provisional Measures regarding Mexico, Order of the Court of April 30, 2009, considerandum 5; I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina, Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5.

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

rigorous evaluation.<sup>6</sup> In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.<sup>7</sup> The Inter-American Court has indicated that the passage of a reasonable period of time without any threats or intimidation, added to the lack of imminent risk, may lead to the lifting of international protection measures.<sup>8</sup>

14. In this matter, the Commission recalls that the precautionary measures were granted in 2011 in light of the information provided by the parties. Following the granting, the State reported on the actions taken to consult the protection measures with beneficiary X (see *supra* paras. 5 and 6), who finally indicated that he did not want the implementation of a police escort due to the visibility of that measure (see *supra* para. 8). Regarding beneficiary Z, the available information indicates that he has been abroad at least since 2013. In such circumstances, the State requested the lifting of these precautionary measures in 2013 and 2014.

15. The Commission made the corresponding forwarding of information to the representation during the time the precautionary measures were in force, including the request to lift made by the State. Similarly, in 2021, the Commission requested additional information from the State and informed it that it will assess whether the matter should remain in force. However, to date, no response has been received from it. The Commission recalls that when a State requests the lifting of a precautionary measure, it must present sufficient evidence and arguments to support its request.<sup>9</sup> By the same token, the representatives of the beneficiaries that want the measures to continue must present evidence of any reasons why.<sup>10</sup> Similarly, Article 25(11) of the Rules of Procedure sets forth that the Commission may lift or review a precautionary measure when the beneficiaries or their representatives unjustifiably fail to provide the Commission with a satisfactory response to the requests made by the State for its implementation.

16. Consequently, the Commission does not have elements of assessment to indicate that the respective procedural requirements are in force with respect to X and Z in Jamaica. Regarding the situation of X, the most recent information dates from 2014, and it does not refer to threatening events against him, while, since then, approximately eight years have gone by without information on his situation. Regarding Z, the latest information available indicates that he has left the country. When analyzing the situation of persons who have left the territory of a State that was requested to implement international protection measures, the Commission recalls that the Inter-American Court has indicated, within the framework of provisional measures, the following:

“Regarding the foregoing, it should be noted that the *effet utile* of provisional measures depends on the real possibility that they can be implemented. With respect to the indicated beneficiaries, there is a material impossibility for the State to comply with the provisional measures over territories where it lacks sovereignty, while, on the other hand, the representatives have not expressed the beneficiaries’ intention to return to the country. Additionally, there is no record of any new serious events that put their life and personal integrity at risk. For these reasons, the Court considers that it is appropriate to lift the provisional measures regarding these persons.”<sup>11</sup>

<sup>6</sup> I/A Court H.R., Provisional Measures regarding Mexico, Order of February 7, 2017, paras. 16 and 17. Available [in Spanish] at [https://www.corteidh.or.cr/docs/medidas/fernandez\\_se\\_08.pdf](https://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf)

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> I/A Court H.R. Matter of Luisiana Ríos *et al.* regarding Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of August 22, 2018. Considerandum 4. Available [in Spanish] at [https://www.corteidh.or.cr/docs/medidas/rios\\_se\\_10.pdf](https://www.corteidh.or.cr/docs/medidas/rios_se_10.pdf)

17. Moreover, in the instant matter, the Commission notes that there is no updated information since 2014, and no sufficient information has been furnished to conclude that the situation meets the requirements of Article 25 of the Rules of Procedure. Taking the previous analysis into account, and in response to the request to lift the measures made by the State, the Commission understands that the factual circumstances that motivated the granting of these precautionary measures have changed significantly, given it does not have sufficient information to infer the existence of a situation presenting a risk. Thus, the Commission deems that it is not possible to identify any situation that currently fulfills the requirements of Article 25 of the Rules of Procedure. In view of the above and taking into account the exceptional and temporary nature of precautionary measures,<sup>12</sup> the Commission deems it appropriate to lift these measures.

18. In line with what was indicated by the Inter-American Court in various matters,<sup>13</sup> a lifting decision does not imply considering, in any way, that the State has effectively complied with the precautionary measures ordered, nor can it imply that the State is relieved from its general protection obligations, contained in Article 1(1) of the Convention, within the framework of which the State is especially obliged to guarantee the rights of persons at risk and must promote the necessary investigations to clarify the facts, followed by the consequences that may be established.

19. Lastly, the Commission emphasizes that regardless of the lifting of these measures, in accordance with Article 1(1) of the American Convention, it is the obligation of the State of Jamaica to respect and guarantee the rights recognized therein, including the life and personal integrity of the persons identified in the matter at hand.

## **V. DECISION**

20. The Commission decides to lift the precautionary measures granted to X and Z in Jamaica.

21. The Commission recalls that the lifting of these measures does not prevent the representation from filing a new request for precautionary measures in case they consider that there exists a situation that meets the requirements established in Article 25 of the Rules of Procedure.

22. The IACHR instructs its Executive Secretariat to notify this resolution to the State of Jamaica and the representation.

23. Approved on December 19<sup>th</sup>, 2021, by: Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Joel Hernández García and Eduardo Stuardo Ralón Orellana; members of the IACHR.

Tania Reneaum Panszi  
Executive Secretary

<sup>12</sup> I/A Court H.R., *Matter of Adrián Meléndez Quijano et al.* Provisional Measures regarding El Salvador. Order of the Court of August 21, 2013, para. 22, and *Matter Galdámez Álvarez et al.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24

<sup>13</sup> See: I/A Court H.R. *Matter of Velásquez Rodríguez.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, Considerandum 3, and *Matter of Giraldo Cardona et al.* Provisional measures regarding Colombia. Order of the Inter-American Court of Human Rights of January 28, 2015, Considerandum 40.

