

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 2/2021**

Precautionary Measure No. 1002-04

Luis Alberto Sabando Veliz regarding Ecuador

January 4, 2021

Original: Spanish

I. BACKGROUND INFORMATION

1. On October 19, 2004, the Inter-American Commission on Human Rights (“the Inter-American Commission,” “the Commission” or “the IACHR”) granted precautionary measures to Luis Alberto Sabando Véliz. The available information indicated that Luis Alberto Sabando Véliz disappeared on September 29, 2004 in the city of Quevedo, while he was handcuffed and in the custody of four police officers from the Provisional Detention Center of the City of Quevedo. In view of the situation presented, the IACHR requested that the State of Ecuador adopt the necessary measures to protect the rights to life, personal integrity, and personal liberty, as well as the judicial guarantees of the beneficiary. The State was further asked to report on the actions taken to determine the beneficiary’s whereabouts.

II. SUMMARY OF INFORMATION PROVIDED DURING THE TIME THE MEASURES WERE IN FORCE

2. The Commission has monitored these precautionary measures through requests for information from the parties. The IACHR requested information from the parties on May 5, and November 13, 2013. The State sent reports on September 13 and 16, 2013, October 8, 10 and 21, 2013, and June 25, 2019, which were forwarded to the beneficiary’s representatives. The State requested the lifting of the measures on June 25, 2019. This request was also transferred to the representatives on February 25, 2020. The representatives are the members of the Committee for the Defense of Human Rights. As of today, the IACHR has not received any response from the representatives.

3. Upon granting these precautionary measures, the only communication received from the representatives is dated December 25, 2013, whereby they confirm receipt of the communication sent by IACHR on November 13, 2013. Despite the requests for information made, the representatives have not responded to the IACHR and have not provided any observations on what was reported by the State either. To date, the Commission has not received a response from the representatives for approximately 16 years, after requesting information in 2013 and 2020.

4. In 2013, the State reported the creation of the Directorate of the Truth and Human Rights Commission (DCVDH for its Spanish acronym) of the Office of the Attorney General of the State (FGE for its Spanish acronym) in March 2012, which had been preceded by the Specialized Unit of the Truth Commission. The creation of this Directorate implied important changes for investigating cases of serious human rights violations. The State explained that this section of the FGE is hierarchically superior to a specialized unit. While the unit is subordinate to a directorate, the DCVDH stands by itself.

5. In terms of attributions and powers, the DCVDH purportedly covers much more than the specialized unit. This unit was solely and exclusively responsible for reviewing the closed universe of 136 cases denounced by the Truth Commission of Ecuador. For its part, The DCVDH has the mission of coordinating, supporting, and investigating cases of human rights violations throughout

the national territory, intended for the State and society to critically confront their past, in order to overcome crises or traumas that have occurred and prevent such events from recurring in the future. In other words, this area of the FGE not only analyzes what is denounced in the *Report*: "*There can be no justice without truth*," but is also entitled to investigate any violation of human rights that constitutes a crime, anywhere in the country. In that sense, it changes from a closed universe to an open one. This open universe includes the cases that have been litigated in the Inter-American Human Rights System.

6. According to the State, in the case Sabando Véliz, the DCVDH is conducting a study for the review, analysis, follow-up and control of the cases that constitute violations of human rights in which the State has the obligation to investigate, in accordance with the statements made by universal and regional human rights organizations. At the same time, the study involves a detailed assessment of the situation of each case so that the State provides an adequate response to the victims and their next of kin, as well as to comply with its obligation to guarantee human rights.

7. In 2019, the State indicated that on January 23, 2019, they were notified of the IACHR's decision to definitively file the case of Mr. Luis Alberto Sabando Veliz registered under petition P-901-07. In this sense, the State indicated that the situation of risk that motivated the granting of the measures no longer exists and consequently the file should be closed.

8. Lastly, the IACHR reiterated the request for information to the representatives on December 23, 2020, without receiving their response to date.

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

8. The precautionary measures mechanism is part of the Commission's function to monitor compliance with the human rights obligations established in the Charter of the Organization of American States, and in the case of Member States that have not yet ratified the American Convention, the Declaration of the Rights and Duties of Man. These general oversight functions are established in Article 18 of the Statute of the IACHR, and the precautionary measures mechanism is described in Article 25 of the Rules of Procedure of the Commission. In accordance with that Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm to persons.

9. The Inter-American Commission and the Inter-American Court of Human Rights have repeatedly established that the precautionary and provisional measures have a dual nature, precautionary and protective. Regarding the protective nature, precautionary measures seek to avoid irreparable harm and to protect the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving legal situations being considered by the IACHR. Regarding the process of decision making and, according to Article 25(2) of the Rules of Procedure, the Commission considers that:

- a) "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American System;
- b) "urgent situation" 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.

10. With respect to the above, Article 25.7 of the Commission’s Rules of Procedure establishes that “the decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions.” Article 25.9 establishes that “the Commission shall evaluate periodically, at its own initiative or at the request of either party, whether to maintain, modify or lift the precautionary measures in force.” In this regard, the Commission must assess whether the serious and urgent situation and the possible generation of irreparable harm, which led to the adoption of precautionary measures, persist. Moreover, the Commission should consider if new situations that might meet the requirements set forth in Article 25 of the Rules of Procedure have subsequently arisen.

11. When analyzing this matter, the Commission recalls that when a State requests the lifting of a precautionary measure, it must present evidence and arguments sufficient to support its request.¹ In the same way, the representatives of the beneficiaries that want the measure to continue must present evidence of the reasons why.² While the assessment of procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, the maintenance of such measures requires a more rigorous evaluation.³ In this sense, the burden of proof and argument increases as time passes and there is no imminent risk.⁴

12. In this regard, although the State has filed a request to lift the precautionary measures at hand, the IACHR notes that, during the time these measures have been in force, the beneficiary’s representatives have not provided concrete information for approximately 16 years. Despite repeated requests for information, the IACHR has not received a response from the representatives. After reviewing the file of the precautionary measures, the Commission has identified an acknowledgment of receipt by the representatives in 2013, without having received subsequent information pursuant to Article 25 of the Rules of Procedure. When reviewing the petition (P-901-07) related to these precautionary measures, the IACHR recalls that in 2019 it decided to “definitively close the matter” due to the representatives’ lack of response on whether the reasons for the petition filed persist and/or if they expect that the IACHR will continue to process it.

13. In this matter, according to the information available, the IACHR understands that the State continues to investigate the events that led to the disappearance of the proposed beneficiary within the framework of the Directorate of the Truth and Human Rights Commission of the Office of the Attorney General of the State. In this sense, the State referred to the actions taken in this regard. Having made the corresponding information transfers to the representatives, the IACHR has not received any observations or information whatsoever during the time that these precautionary measures have been in force.

14. In understanding the nature of the mechanism of precautionary measures in situations like this one, the Commission recalls what was indicated by the Inter-American Court as part of the provisional measures in the *Matter of Almonte Herrera in the Dominican Republic* granted in 2010. That matter concerns, among others, the disappearance of Mr. Herrera. When deciding on the lifting of such provisional measures in 2015, the Inter-American Court indicated as follows:

¹ I/A Court H.R. Provisional measures regarding Mexico. Order of February 7, 2017, paras. 16 and 17. Available at http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf

² Ibidem

³ Ibidem

⁴ Ibidem

"14. The passage of time in this matter and the lack of progress in the investigations directly affects the useful effect of these provisional measures, which fundamentally sought to avoid irreparable harm to the life and personal integrity of Mr. Almonte Herrera through the expeditious action of the national authorities to find his whereabouts. However, these measures have been in force for more than five years and the Court still does not have results or concrete advances sufficient to clearly determine what happened or the whereabouts of Mr. Almonte Herrera, hence the protection that was expected to be obtained through them resulted ineffective (...)"⁵

15. The Commission notes that the Inter-American Court indicated on that occasion that, "due to the particular circumstances of the [...] matter, and taking into account that provisional measures are of an exceptional nature and refer to a specific temporary situation so that, due to their own nature, they cannot be perpetuated indefinitely, in addition to the fact that since February 2012 a petition is pending before the Commission which is in the admissibility stage, their lifting should be ordered and the eventual violations of the American Convention arising from the what happened to Mr. Almonte Herrera should be analyzed as part of a contentious case, if the presumptions for such effect are given, and not within the framework of the provisional measures."⁶

16. In line with what has been indicated by the Inter-American Court, the Commission agrees that international protection measures, such as these precautionary measures, sought that the competent authorities adopt expeditious action to find the person's whereabouts and avoid irreparable harm. Similarly, the Commission understands that these precautionary measures, like provisional measures, cannot be extended indefinitely in time given their temporary nature, even more when there is no observation or information whatsoever on the part of representatives in response to requests for information made by the IACHR.

17. In this regard, the Commission recalls that Article 25, paragraph 11, of its Rules of Procedure establishes that "the Commission may lift or review a precautionary measure when the beneficiaries or their representatives, unjustifiably, refrain from giving a satisfactory response to the Commission on the requirements raised by the State for its implementation." Despite communications sent to the representatives in 2013 and 2020, the Commission understands that their lack of response is not duly justified. According to the information available in the file, over approximately 16 years the Commission has not received any satisfactory response.

18. Furthermore, considering the nature of the situation presented, the Commission observes that these precautionary measures were related to petition P-901-07. Following what was indicated by the Inter-American Court in the *Matter of Almonte Herrera in the Dominican Republic*, the Commission understands that, if the corresponding assumptions had been met, that petition represented the opportunity to analyze the possible violations of the Convention that could have occurred in this matter. The above, to the extent that it would be appropriate to carry out an analysis of the merits on various actions undertaken by the State in the framework of the relevant investigations in light of the corresponding standards. However, upon having applied the corresponding regulatory provisions and in the absence of a response from the representatives, the IACHR decided to "definitively file" that matter, which was duly notified to the parties in due course, as indicated by the State.

⁵ I/A Court H.R. Matter of Juan Almonte Herrera *et al.* regarding the Dominican Republic. Provisional Measures. Order of the Inter-American Court of Human Rights of November 13, 2015. Considerandum 14. Available at https://www.corteidh.or.cr/docs/medidas/almonte_se_04.pdf

⁶ *Ibid.*

19. In light of the above-mentioned considerations, and in accordance with the principle of complementarity and subsidiarity that governs the Inter-American System as a whole, the IACHR hereby decides to lift the precautionary measures in question. At the time of making this decision, the Commission takes into account the exceptional and timely nature of the precautionary measures.⁷ Moreover, it recalls the inescapable duty of the State of Ecuador to comply with the corresponding investigations and act with due diligence pursuant to the American Convention and the international standards applicable.

20. Lastly, as the Inter-American Court has indicated on other occasions, a decision to lift measures does not imply in any way that the State did effectively implement the precautionary measures granted, nor can this decision imply that the State is relieved of its general obligations of protection, contained in Article 1.1 of the Convention, within the framework of which the State is especially obliged to protect the rights of persons at risk and must promote the necessary investigations to clarify the facts, followed by the consequences that the relevant legislation establishes.⁸ As the Inter-American Court has indicated, the adoption of a decision to lift or the declaration of non-compliance with the provisional measures does not imply a decision on the merits, nor does it prejudge the State's responsibility for the facts denounced.⁹

IV.DECISION

21. The Commission hereby decides to lift the precautionary measures granted to Luis Alberto Sabando Veliz and reminds the State of its general protection obligations pursuant to Article 1.1. of the Convention. In that sense, it calls for any corresponding and necessary investigations to continue.

22. The Commission instructs its Executive Secretariat to notify this resolution to the State of Ecuador and the representatives.

23. Approved on January 4, 2021 by: Joel Hernández García, President; Antonia Urrejola Noguera, First Vice-President; Flávia Piovesan, Second Vice-President; and Margarette May Macaulay, members of the IACHR.

María Claudia Pulido
Acting Executive Secretary

⁷ 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

⁸ I/A Court H.R. Matter of Juan Almonte Herrera *et al.* regarding the Dominican Republic. Provisional Measures. Order of the Inter-American Court of Human Rights of November 13, 2015. Considerandum 22.

⁹ I/A Court H.R. Matter of Juan Almonte Herrera *et al.* regarding the Dominican Republic. Provisional Measures. Order of the Inter-American Court of Human Rights of November 13, 2015. Considerandum 26.