

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 30/2021**

Precautionary Measures No. 211-20
Esber Rafael Ramírez Argota regarding Cuba
(Member of the Citizens Committee for Racial Integration - CIR)
April 5, 2021
(Extension)
Original: Spanish

I. INTRODUCTION

1. On February 18, 2021, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a request for extension of precautionary measures from the representatives of the measures granted on January 19, 2021 to three members of the Citizens Committee for Racial Integration (CIR), urging it to request that the State of Cuba (hereinafter “the State” or “Cuba”) protect the rights of Esber Rafael Ramírez Argota. According to the request, the identified person is a member of the CIR and has been subjected to harassment and other risk events in the current context of the country.

2. The IACHR requested information from the State on February 23, 2021, in accordance with Article 25(5) of the Rules of Procedure.

3. Upon analyzing the submissions of fact and law provided by the applicants, the Commission considers that the information presented shows *prima facie* that Esber Rafael Ramírez Argota is in a serious and urgent situation, since his rights to life and personal integrity are at risk of irreparable harm. Consequently, in accordance with Article 25 of the IACHR Rules of Procedure, the Commission requests that Cuba: a) adopt the necessary measures to protect the rights to life and personal integrity of the beneficiary. To this end, the State must both ensure that state actors respect the life and personal integrity of the beneficiary, as well as protect his rights in relation to acts of risk that are attributable to third parties, in accordance with the standards established by international human rights law; b) adopt the necessary measures so that the beneficiary can carry out his activities as a human rights defender without being subject to acts of violence, intimidation, and harassment in the exercise of his work. The above includes the adoption of measures to protect his right to freedom of expression; c) consult and agree upon the measures to be adopted with the beneficiary and his representatives; and d) report on the actions taken to investigate the alleged events that led to the adoption of this precautionary measure, so as to prevent such events from reoccurring.

II. PRECAUTIONARY MEASURES GRANTED ON JANUARY 19, 2021

4. On January 19, 2021, the IACHR issued Resolution 7/2021 by which it granted precautionary measures in favor of Juan Antonio Madrazo Luna, Marthadela Tamayo, and Oswaldo Navarro Veloz (members of the CIR) in Cuba. Upon analyzing the submissions of fact and law provided by the applicants, the Commission considered that the information presented shows *prima facie* that Juan Antonio Madrazo Luna, Marthadela Tamayo and Oswaldo Navarro Veloz are in a serious and urgent situation, given that their rights to life and personal integrity are at risk of irreparable harm.

5. Consequently, in accordance with Article 25 of the IACHR Rules of Procedure, the Commission requested that Cuba: a) adopt the necessary measures to protect the rights to life and personal integrity of Juan Antonio Madrazo Luna, Marthadela Tamayo, and Oswaldo Navarro Veloz. To this end, the State must both ensure that state actors respect the life and personal integrity of the beneficiaries, as well as

protect their rights in relation to acts of risk that are attributable to third parties, in accordance with the standards established by international human rights law; b) adopt the necessary measures so that Juan Antonio Madrazo Luna, Marthadela Tamayo and Oswaldo Navarro Veloz can carry out their activities as human rights defenders, without being subject to acts of violence, intimidation, and harassment in the exercise of their work. The above includes the adoption of measures to protect their right to freedom of expression; c) consult and agree upon the measures to be adopted with the beneficiaries and their representatives; and d) report on the actions taken to investigate the alleged events that led to the adoption of this precautionary measure, so as to prevent such events from reoccurring.¹

6. Since the granting of the precautionary measures, the State has not provided any response to the IACHR, and the timelines granted have expired.

III. SUMMARY OF FACTS AND ARGUMENTS PROVIDED BY THE PARTIES

1. Information provided by the beneficiaries' representation

7. The representation indicated that following the granting of precautionary measures in favor of three members of the Citizens Committee for Racial Integration (CIR), the Cuban State has not responded to the Commission's request, nor has it implemented the recommendations. On the contrary, they indicated that the CIR members remain at risk. They referred in particular to the situation of Mr. Juan Antonio Madrazo Luna, beneficiary of precautionary measures, and Esber Rafael Ramírez Argota, proposed beneficiary, both members of the CIR.

8. Hereafter, the alleged facts reported by the representation:

- *Situation of the beneficiary Juan Antonio Madrazo Luna*

9. On Monday, February 15, 2021, the CIR began a series of audiovisual presentations and was planning to gather eight artists and activists at the CIR headquarters, also the domicile of Mr. Madrazo Luna. The CIR summoned these persons in advance, with whom they would watch and deliberate on the documentary "MLK FBI." The activity was scheduled for 11:00 a.m., and it was a closed event, was not promoted on social media or publicly disseminated due to the restrictions of the COVID-19 pandemic.

10. Around 9:10 a.m., Mr. Madrazo Luna went to the neighborhood grocery store to buy snacks for the event. On his return home, around 9:20 a.m., he was approached by two State Security officers, who told him that they wanted to talk to him, and given his refusal, they called a uniformed police officer to detain him. He was transferred to the Territorial Unit of the National Revolutionary Police located in "Zapata y C," where he was deprived of liberty for approximately two hours. During his detention in the police unit, he was kept in a waiting room, known as "the fishbowl."

11. At the police unit, the beneficiary was questioned. He was reportedly told that they had learned of a "massive" event at the CIR headquarters and that they would not allow it. The Mayor stated: "apparently the members of the CIR have not understood the lesson because it seems that what happened in November has not had an effect on them." He warned him that his intention is to prevent any meeting of the CIR, since they will not allow any "counterrevolutionary" activity. In addition, he told him that they should "look in the mirror" of the San Isidro Movement and the 27N Movement, stating that they will not tolerate "oppositional" activities and that "they are watching them." Upon being released, the beneficiary went to his home and carried out the activity planned for that day with only four persons.

¹ IACHR, Resolution 7/21, Precautionary Measures No. 211-20, Juan Antonio Madrazo Luna, Marthadela Tamayo and Oswaldo Navarro Veloz regarding Cuba, January 19, 2021. Available at http://www.oas.org/en/iachr/decisions/pdf/2021/res_7-2021_mc-211-20_cu_en.pdf

- *Situation of the proposed beneficiary Esber Rafael Ramírez Argota*

12. Esber Rafael Ramírez Argota is also a member of the CIR; however, he is not among the beneficiaries of the precautionary measures granted. The request indicates that the proposed beneficiary has been subject to risk events.

13. On Friday, February 5, 2021 at around 8:30 a.m., the proposed beneficiary was detained following a search of his home located in the municipality of Antilla in Holguín. To enter the house, the officers showed him a search warrant that lacked the signature of the Prosecutor as required by law. The proposed beneficiary expressed his complaint, to which one of the State Security officers responded that they “do not need proof of any prosecutor to proceed.” After that, he was immediately taken to a patrol car. The search of the house was carried out in the presence of his wife Clara Leydi Herrera and their two children. The officers allegedly entered his daughter’s bedroom, without even respecting that she was in “underwear.”

14. The house was searched by twelve officers, six of them were uniformed police from the National Revolutionary Police and the other six were members of the State Security. Leading the operation was the head of the Holguín territory of the State Security Confrontation Department. Following the search, the officers took away: two laptops; two USB flash drives; two camera memory cards; four cell phones (one from the proposed beneficiary, one from his wife, one from his son, and one from his daughter); in addition to 2000 pesos, which is equivalent to approximately 80 US dollars.

15. Upon being detained, the proposed beneficiary was transferred to the Criminal Investigation Prison in Holguín. There, he remained alone in a cell and went on a hunger strike. On February 6, 2021, they took away the mattress and sheet that they had given him the day before to cover himself. The proposed beneficiary was accused of spreading complaints on social media, receiving money from “counterrevolutionary” groups, and usurping public information. These accusations were due the work of documenting human rights violations that he carries out daily as part of his duties as a member of the CIR.

16. Throughout the time that the proposed beneficiary was deprived of liberty, he was held incommunicado, and his family was unaware of his whereabouts. However, at the time of his detention, the officer informed his wife that “he would be detained indefinitely under an investigation process.” The proposed beneficiary was released on February 7, 2021 at approximately 12:30 p.m.

2. Information provided by the State

17. The Commission requested information from the State on February 23, 2021. There has been no response to this date and the granted timelines have expired.

IV. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY, AND IRREPARABLE HARM

18. Precautionary measures are one of the mechanisms of the Commission for the exercise of its function of overseeing compliance with human rights obligations, as established 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 Statute of the IACHR. 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.

19. 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. Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights. Regarding their precautionary nature, these measures have the purpose of preserving a legal situation while it is being considered by the IACHR. Their precautionary nature aims 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 the decision on the merits and, thus, prevent the alleged rights from being violated, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures allow the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations. For purposes of decision making, and 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.

20. The Commission recalls 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.²

21. As a preliminary matter, the Commission deems it relevant to clarify that, in this proceeding, it is not called upon to determine whether there have been violations to the rights of the proposed beneficiaries. In this sense, the Commission will not rule on the alleged arbitrariness of the detentions or the various procedural and substantive questions following the allegations around the detention. The Commission is also not called upon to rule on the attribution of criminal or other liabilities regarding the persons involved in this matter. The analysis carried out by the Commission herein is exclusively related to the requirements of seriousness, urgency, and risk of irreparable harm established in Article 25 of its Rules of Procedure, which can be resolved without making any determinations on the merits which are specific to the petition and case system.

22. The Commission is also taking the context of Cuba into account when understanding the alleged facts. In this regard, it is emphasized that the Commission has consistently identified that human rights defenders in Cuba are often deprived of their liberty in allegedly arbitrary manners under certain types of criminal offenses –such as contempt, public attacks, and disorder– and are sometimes subjected to attacks, threats and mistreatment within prisons.³ Recently, near the end of 2020, the Commission expressed its concern about the escalation of criminalization and harassment against activists, journalists and artists in Cuba,⁴ reiterating the obligations of the State of Cuba in terms of freedom of expression, as well as personal liberty and security.⁵

² In this regard, for instance, referring to provisional measures, the Inter-American Court has indicated that a minimum of detail and information is required to make a *prima facie* assessment on whether an extremely serious and urgent situation exists. IACHR, Matter of Children and adolescents deprived of 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.

³ IACHR, Special Report on the Situation of Freedom of Expression in Cuba, 2018, paragraph 136.

⁴ IACHR, Press Release No. 280-20. The IACHR and its Office of the Special Rapporteur express grave concern over the increase in criminalization and harassment of activists, artists, and independent journalists in Cuba, available at <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1191&IID=1>, Washington, November 23, 2020.

⁵ Press Release No. 286-20, IACHR Rejects Arbitrary Operation Against the San Isidro Movement in Cuba and Reiterates State’s International Human Rights Obligations, available at http://www.oas.org/en/iachr/media_center/PReleases/2020/286.asp, Washington, November 28, 2020.

23. While the representation has requested the “extension” of these precautionary measures, the Commission recalls that, for an extension of precautionary measures to be granted, the facts alleged in the request must have a “factual connection” with the events that justified the initial adoption of the precautionary measures.⁶ In this regard, the Commission notes that the proposed beneficiary is identified as a member of the CIR, and it has been alleged that, due to this condition, he is at risk in Cuba. As a member of the CIR, the Commission understands that he shares risk factors relating to the very membership to the organization. In this regard, the Commission observes that the proposed beneficiary is purportedly exposed to events of a similar nature to those that the current beneficiaries of these precautionary measures have faced to date. In this sense, for the Commission the requirement of “factual connection” is considered fulfilled.

24. Regarding the ongoing risk identified in Resolution 7/2021, the representation reported on the situation of Juan Antonio Madrazo Luna, who is beneficiary of precautionary measures and member of the CIR. As indicated, upon being questioned at a police station in February 2021, the Major told Mr. Madrazo that “apparently the members of the CIR have not learned the lesson because it seems that what happened in November has not had an effect on them.” That same Major indicated him that he would not allow any activity considered “counterrevolutionary” or “oppositional.” The representatives also stressed that the Major told the beneficiary that “they are watching them.” For the Commission, the risk factors assessed at the time of initially granting these precautionary measures remain in force, as shown by the above facts.

25. Thus, when analyzing compliance with the seriousness requirement in this matter, the Commission takes into account that the State has not provided a response to the precautionary measures granted, despite the expiration of the timelines granted. In this regard, the Commission indicates, following the Inter-American Court, that failure to comply with the State duty to report on all the measures adopted in compliance with its decisions is especially serious, given the legal nature of these measures that seek to prevent irreparable harm to persons in serious and urgent situations.⁷ The duty to inform constitutes a dual obligation that requires, for its effective fulfillment, the formal presentation of a document on time and the specific, true, current and detailed material reference to the issues on which that obligation falls.⁸

26. Regarding the situation of the proposed beneficiary, the Commission notes that, as a member of the CIR, he has been the subject of the following alleged events:

- He was detained on the morning of February 5, 2021 at his home, and they confiscated certain equipment. On that date, he was immediately transferred to a patrol car, without indicating the place where he was detained.
- The family of the proposed beneficiary was unaware of his whereabouts until he was released on February 7, 2021, while the officer informed his wife that “he would be detained indefinitely under an investigation process.”
- While deprived of his liberty, the proposed beneficiary was held incommunicado; they took away the mattress and the sheet that had been given to him; and he remained in a cell (at some point on a hunger strike).
- He was released on February 7, 2021, after having been accused of spreading complaints on social media, receiving money from “counterrevolutionary” groups, and usurping public information.

⁶ In this regard, see: IACHR, Resolution 10/17, Precautionary Measure No. 393-15 Detainees in “Punta Coco” regarding Panama, March 22, 2017, para. 28; and I/A Court H.R., Fernández Ortega *et al.* regarding Mexico. Resolution of Provisional Measures of November 23, 2010, considerandum 19.

⁷ I/A Court H.R. Matter of Communities of Jiguamiandó and Curvaradó regarding Colombia. Provisional Measures. Order of the Inter-American Court of Human Rights of February 7, 2006. Considerandum 16, and Case of Luisiana Ríos *et al.* (Radio Caracas Televisión – RCTV). Provisional Measures. Resolution of the Inter-American Court of Human Rights of September 12, 2005. Considerandum 17.

⁸ *Ibidem*

The representation reported that it was due to the work of documenting human rights violations that he carries out daily as part of his duties as a member of the CIR.

27. In this regard, the Commission notes that it is not appropriate to rule on the compatibility of the criminal proceedings in which the proposed beneficiary is involved in light of the American Declaration, which exceeds the mechanism of precautionary measures. In turn, as regards the hunger strike that the proposed beneficiary culminated when he was released, and in line with what has already been indicated the Inter-American Court in the *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, the eventual effects on the personal integrity of those who go on hunger strikes with certain characteristics and purposes (such as, for instance, aimed at reporting procedural irregularities or demanding freedom), cannot be attributed to the State.⁹

28. Notwithstanding the foregoing, the Commission observes that, within the framework of the identified risk for three members of the CIR in Cuba, the proposed beneficiary, as a member of the organization, was detained and his whereabouts remained unknown for approximately three days, while his wife was informed that “he would be detained indefinitely under an investigation process” but without telling her his place of detention. Such a situation is particularly serious both in relation to the risk already identified concerning other members of the CIR –in the terms of Resolution 7/2021– and in the current context of the country. The Commission also notes that, during his detention, the proposed beneficiary was held incommunicado and placed in a cell, after removing his mattress and sheet. Similarly, the Commission observes that, although the proposed beneficiary was released, he currently does not have various pieces of equipment that were confiscated during his detention.

29. Understanding such alleged facts in the context in which they are inserted, the Commission observes that there is special hostility towards the members of the CIR, which is evidenced by the actions of the State officers who carried out the reported facts to the detriment of the proposed beneficiary. In coherence with this understanding, the Commission observes that in February 2021 a police major told a member of the CIR, who is beneficiary of precautionary measures, that “they are watching them” and that “apparently [...] they have not understood the lesson because it seems that what happened in November has not had an effect on them.”

30. The Commission notes that, despite having requested information from the State, to date no communication has been received from the State of Cuba. The Commission regrets the lack of response from the State, which prevents the Commission from learning the State’s position regarding this request as well as any actions implemented in order to address the risk described. At the same time, and according to the information provided by the applicants, the risk described comes from actions of State actors. On another note, although it is not for the Commission to determine the perpetrators of the events of risk, or whether they are attributable to state actors, at the time of assessing this request it does take into account the seriousness of the possible participation of State actors according to the allegations presented, as this would place the proposed beneficiary in a situation of vulnerability.

31. In these circumstances, and in light of the analysis carried out, the Commission considers, from the applicable *prima facie* standard and in the context that the State of Cuba is going through, that it has been sufficiently proven that the rights to life and personal integrity of Esber Rafael Ramírez Argota are at serious risk.

32. Regarding the requirement of urgency, the Commission deems that it has been met given that the information provided suggests that the risk for the proposed beneficiary is likely to continue and

⁹ I/A Court H.R. *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*. Merits, Reparations and Costs. Judgment of May 29, 2014. Series C No. 279, para. 394. Available [in Spanish] at: https://www.corteidh.or.cr/docs/canec/articulos/seriec_279_esp.pdf

exacerbate over time as the members of the CIR continue their activities. The Commission does not have specific information provided by the State sufficient to assess the actions that have been taken to address the alleged situation of risk. There is also no information available to indicate whether the alleged situation has been properly mitigated or no longer exists. The Commission, given the situation analyzed, considers that it is necessary to implement protection measures immediately.

33. As regards the requirement of irreparable harm, the Commission considers that it is met, since the possible impact on the rights to life and personal integrity constitutes the maximum situation of irreparability.

IV. BENEFICIARY

34. The Commission declares that the beneficiary of this precautionary measure is Esber Rafael Ramírez Argota, who is duly identified in this proceeding.

V. DECISION

35. The Commission 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 Cuba:

- a) adopt the necessary measures to protect the rights to life and personal integrity of the beneficiary. To this end, the State must both ensure that state actors respect the life and personal integrity of the beneficiary, as well as protect his rights in relation to acts of risk that are attributable to third parties, in accordance with the standards established by international human rights law;
- b) adopt the necessary measures so that the beneficiary can carry out his activities as human rights defender without being subject to acts of violence, intimidation, and harassment in the exercise of his work. The above includes the adoption of measures to protect his right to freedom of expression;
- c) consult and agree upon the measures to be adopted with the beneficiary and his representatives; and
- d) report on the actions taken to investigate the alleged events that led to the adoption of this precautionary measure, so as to prevent such events from reoccurring.

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

37. The Commission emphasizes that, pursuant to Article 25(8) of the Rules of Procedure of the Commission, 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.

38. The Commission instructs the Executive Secretariat of the IACHR to notify this resolution to the State of Cuba and the representatives.

39. Approved on April 5, 2021 by: Antonia Urrejola, President; Julissa Mantilla, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay, Esmeralda Arosemena de Troitiño, Joel Hernández García and Edgar Stuardo Ralón Orellana, members of the IACHR.

María Claudia Pulido
Acting Executive Secretary