
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 40/2021**

Precautionary Measure No. 254-07
“A” (“AW”) regarding Guyana
May 10, 2021
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decided to lift these precautionary measures in favor of “A” (or “AW”) in Guyana. The IACHR considers that the corresponding allegations shall be analyzed within the framework of petition 353-07 if the prerequisites are fulfilled. The IACHR further notes that it has not received specific information from the parties for approximately 9 years.

II. BACKGROUND INFORMATION

2. On February 12, 2008, the IACHR granted precautionary measures in favor of the child “A” or “AW”. According to the request for precautionary measures, the child was placed in an orphanage by a family member in 2002 and, although the child’s biological family tried to adopt her, she was placed with another couple in 2004. The applicants further alleged that the child might be the target of abuse under this custody arrangement. The IACHR required the State of Guyana to immediately verify and report on the beneficiary’s situation to the Commission, and to adopt the necessary measures to protect the life and physical integrity of the beneficiary.

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

3. The IACHR continued to monitor the situation through requests for information made to the parties¹. On May 10, 2013, the IACHR requested information from the parties to analyze whether the precautionary measures at hand should remain in force. The State did not provide a response. On July 2, 2013, the beneficiary’s representation reported in a short email that it had no information on the beneficiary’s situation since her adoption by another couple and that the child’s biological parents continue to live in Guyana. The IACHR again requested additional information from the representation on January 10, 2021, and no response was provided.

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

4. The precautionary measures mechanism is part of the Commission’s function of overseeing compliance with the human rights obligations set forth in the Charter of the Organization of American States and, in the case of the member states that have yet to ratify the American Convention, the Declaration of the Rights and Duties of Man. These general oversight functions are established in Article 18 of the IACHR Statute, and the precautionary measures mechanism is described in Article 25 of its Rules of Procedure. In accordance with the latter, the Commission grants precautionary measures in serious and urgent situations in which the measures are necessary to avoid an irreparable harm.

¹ As indicated in footnote 2 of Admissibility Report 60/15 of October 17, 2015: The petitioner presented information related to the precautionary measures on March 14, 2008 and April 23, 2009, while the State submitted information on February 21, 2008 and June 25, 2008. See the IACHR’s 2008 Annual Report, Chapter III, Section C - Petitions and individual cases before the Inter-American Commission on Human Rights, para. 24.

5. 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, both precautionary and protective. The protective nature of the precautionary measures seeks to avoid irreparable harm and preserve the exercise of human rights, while their precautionary nature aims to preserve legal situations while under consideration of the IACHR. For the purposes of reaching a decision, and in accordance with Article 25.2 of the Rules of Procedure, the Commission considers that:

- a) 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) an “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 impact on rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

6. Furthermore, 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 IACHR shall assess whether the serious and urgent situation and risk of irreparable harm that led to the adoption of the precautionary measures, persist. The Commission shall further consider any new situations that might have arisen and that meet the requirements set forth in Article 25 of the Rules of Procedure.

7. As a preliminary aspect, the IACHR recalls that this matter is linked to petition 353-07 dated March 23, 2007. In the framework of this petition, the petitioners alleged that the State of Guyana bears responsibility for irregularities committed by various authorities in the judicial process for the custody and adoption of the child “A”, between 2003 and 2011. Petitioners also alleged an arbitrary placement of child “A” in an adoptive family and not her extended biological family, and lack of protection of the child from abuse and mistreatment committed by the adoptive family.

8. The aforementioned petition was granted through Admissibility Report 60/15 on October 17, 2015, in which the IACHR decided the following:

3. Without prejudging the merits of the complaint, after examining the position of the petitioners, and pursuant to the requirements set forth in Articles 31 to 34 of its Rules of Procedure (hereinafter “IACHR Rules”), the Commission declares the petition admissible on the claims concerning: i) Articles I (right to personal security), V (right to protection of family life), VI (right to family and protection thereof), VII (right to protection for children), and XVIII (right to a fair trial) of the American Declaration with respect to child A; ii) Articles V (right to protection of family life), VI (right to family and protection thereof), and XVIII (right to a fair trial) of the American Declaration with respect to KPP and AW; and iii) Article XVIII (right to a fair trial) of the American Declaration with respect to RB and OU. The IACHR also declares the petition inadmissible under Articles II (right to equality before the law), IV (right to freedom of investigation, opinion, expression and dissemination), VIII (right to residence and movement) and XIX (right to nationality) of the American Declaration. In addition, the IACHR decides to publish this report and include it in its annual report to the General Assembly of the Organization of American States.²

9. Based on the foregoing, the IACHR will have the opportunity to reach a decision on the main allegations and contentious matters in the framework of the corresponding case, if the prerequisites of that procedure are met, and upon assessment of the merits.

² IACHR, Report No. 60/15. Petition 353-07, KPP et al. October 17, 2015. Available at <https://www.oas.org/en/iachr/decisions/2015/GUAD353-07EN.pdf>

10. With regard to the proceeding at hand, the IACHR recalls that the precautionary measures were granted in 2007 so the State may “immediately verify” the beneficiary’s situation and adopt measures to protect her life and physical integrity.

11. The IACHR notes that, although the beneficiary’s representation alleged in the petition that “A’s” biological family had not been able to communicate with her since the decision of August 16, 2004³, the State has maintained that once the adoption process was completed, the child was placed in a good home, attended and did well in school, and was well cared for⁴. To support this, the State submitted a social inquiry report drafted by a social worker in March 2008, who noted that the child is living in a comfortable home environment and has developed a very affectionate relationship with her adoptive parents⁵. The report further states that the child’s school attendance and grades have improved each year since her adoption and up to the date of the report⁶. Furthermore, the child was allegedly not prevented from being in contact with her biological family members, and she has received visits on several occasions⁷. Such allegations will be assessed within the framework of the Petitions and Cases System, as indicated in the Admissibility Report. Nonetheless, the information includes the measures adopted by the State, after the granting of the precautionary measures at hand.

12. In analyzing the current situation, the IACHR recalls that 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 rigorous evaluation.⁸ In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.⁹ Furthermore, the Inter-American Court has indicated that the lack of threats or intimidation over a reasonable period of time, added to the lack of imminent risk, may lead to the lifting of international protection measures.¹⁰

13. After the IACHR requested information from the parties in 2013, the beneficiary’s representation provided only general information, reiterating previous allegations in a brief email, and did not submit specific or detailed information on the situation constituting the subject-matter of the precautionary measures. Moreover, after reiterating the request for information in 2021, the IACHR received no response. Given this situation, the Commission notes that from 2013 to date, approximately 9 years have elapsed without any specific information from the beneficiary’s representation in the framework of the precautionary measures mechanism.

14. Similarly, upon requesting information from the State on the measures adopted to implement the precautionary measures at hand, the IACHR observes that no response was received. The Commission recalls that, according to the Inter-American Court, failure to comply with the State’s duty to report on all the measures adopted in the implementation of its decisions is particularly serious, given the legal nature of these measures that seek to prevent irreparable harm to persons in serious and urgent situations¹¹.

³ IACHR, Report No. 60/15. Petition 353-07, KPP et al. October 17, 2015, para. 16

⁴ IACHR, Report No. 60/15. Petition 353-07, KPP et al. October 17, 2015, para. 22

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ I/A Court H.R. Provisional measures regarding Mexico. Order of February 7, 2017, paras. 16 and 17. Available [in Spanish] at http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf

⁹ Ibid.

¹⁰ Ibid.

¹¹ 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.

The duty to inform constitutes a dual obligation that, for its effective fulfillment, requires the formal presentation of a document in due time and the specific, true, current and detailed material reference to the subjects on which such obligation falls¹².

15. In this sense, the IACHR lacks the elements of assessment to conclude that the beneficiary is currently in a situation of "imminent" risk in accordance with Article 25 of the Rules of Procedure. This Commission recalls that the allegations made require a review of the merits, which falls outside the scope of the precautionary measures mechanism and is better suited to the analysis of the identified petition. Therefore, considering the exceptional and temporary nature of the precautionary measures¹³, the IACHR decides to lift the precautionary measures at hand.

16. Lastly, and as noted by the Inter-American Court in various matters¹⁴, the lifting of measures by no means implies that the State has effectively implemented the precautionary measures issued, nor does it imply that the State is relieved of its general protection obligations. In this framework, 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 established consequences. In addition, based on the assessment of the Inter-American Court, the lifting or declaration of non-compliance with precautionary measures in no way presupposes a potential decision on the merits of a case if it were to become known to the inter-American system through a petition, nor does it constitute a prejudgment of any responsibility of the State for the incidents reported¹⁵.

V. DECISION

17. The Commission decides to lift the precautionary measures granted to the child "A" ("AW") in Guyana.

18. The Commission instructs the Executive Secretariat to notify this resolution to the State of Guyana and to the beneficiary's representation.

19. Approved on May 10, 2021, by: Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay; Edgar Stuardo Ralón Orellana; and, Joel Hernández García, members of the IACHR.

María Claudia Pulido
Acting Executive Secretary

¹² Ibid.

¹³ 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 of Galdámez Álvarez et al. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24

¹⁴ See: I/A Court H.R. Case 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.

¹⁵ See: I/A Court HR. Matter of Guerrero Larez. Provisional measures regarding Venezuela. Order of the Inter-American Court of Human Rights of August 19, 2013, Considerandum 16, and Matter of Natera Balboa. Provisional measures regarding Venezuela. Order of the Inter-American Court of Human Rights of August 19, 2013, Considerandum 16.