
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 98/2021**

Precautionary Measure No. 764-04
Rafael Castillo Gándara and Walter Robles regarding Guatemala¹
December 1, 2021
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in favor of Rafael Castillo Gándara and his lawyer, Walter Robles, in Guatemala. At the time of making the decision, the Commission evaluated the actions taken by the State during implementation as well as the observations of the beneficiaries' representation. Following the requests to lift the measures made by the State, the IACHR repeatedly requested observations from the representation, who indicated that they were unable to communicate with the beneficiaries. Upon not identifying compliance with the procedural requirements, the IACHR decided to lift these measures.

II. BACKGROUND INFORMATION

2. On October 27, 2004, the IACHR granted precautionary measures to Rafael Castillo Gándara and his lawyer, Walter Robles ("beneficiaries"), represented by the Center for Justice and International Law (CEJIL). It was alleged that Mr. Castillo Gándara was subjected to surveillance and death threats by a member of the Public Ministry, an institution where his ex-wife worked, upon orders by the then Attorney General of the Nation. Upon analyzing the available information, the Commission requested that the State adopt the necessary measures to protect the life and physical integrity of Messrs. Castillo Gándara and Robles, and report on the actions taken to investigate the threats made against them.²

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 these measures through the request for information from the parties. On December 16, 2010, the State presented a report. On May 24, 2012, the Commission requested that the representation provide updated information. On November 23, 2012, the State submitted a report and requested that the precautionary measures be lifted. On January 9, 2013, the Commission forwarded its observations to the representation. On February 15, 2013, the representation presented a report. On July 19, 2013, the Commission forwarded the representation's response to the State. On October 10, 2014, the beneficiary submitted information to the Commission. On October 1, 2015, the Commission requested that the parties submit updated information "to examine whether these precautionary measures should remain in force." Upon a time extension was granted, on November 18, 2015, the representation indicated that "it has not been possible to establish contact with [...] [the beneficiaries]," and therefore, "they do not have updated information regarding their current situation. "

4. On February 10, 2016, the State presented a report and requested the lifting of the measures. On April 26, 2017, the Commission made the necessary forwarding of information between the parties. On

¹ In accordance with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Edgar Stuardo Ralón Orellana, a Guatemalan national, did not participate in the debate or deliberation of this matter.

² IACHR. Precautionary measures 2004. Available [in Spanish] at <http://www.cidh.org/medidas/2004.sp.htm>.

June 21, 2017, the representation again reported that it had not been possible to establish contact with the beneficiaries. On July 24, 2017, the State submitted a report and requested that the precautionary measures be lifted. On August 1, 2017, the Commission forwarded the information provided by the State to the representation. On September 1, 2017, the representation informed the Commission that it continues to have no contact with the beneficiaries and that it has asked the State for the beneficiaries' contact details, obtaining a negative response. On July 29, 2021, the Commission requested that the representation provide updated information on the beneficiaries "so that the IACHR can examine whether these precautionary measures should remain in force." On August 18, 2021, the representation again indicated that it could not contact the beneficiaries.

A. Information provided by the State

5. The State considered that it has complied with the Commission's request and has reiterated its request to lift the precautionary measures over time. On December 16, 2010, the State reported on the investigation into the crime of attempted extrajudicial execution, related to the beneficiary, whose last action was on August 2, 2006, and in which the challenge of the Fifth Criminal Court of First Instance was dismissed. It was reported that the beneficiary had a security detail consisting of four officers in charge of the Special Forces of the National Civil Police and perimeter security at his residence due to an attack against him carried out on August 29, 2010.

6. On November 23, 2012, the State reported that to date there are no complaints or reports of new threats and/or harassment against the beneficiary. On February 10, 2016, the State indicated that: (i) each of the beneficiaries has a security detail made up of two officers in charge of the Division of Protection for Persons and Security (DPPS) of the National Civil Police; (ii) on June 15, 2015, a consultation meeting was held with Mr. Castillo Gándara to discuss his safety; (iii) the State has tried on multiple occasions to contact Mr. Castillo to carry out a risk assessment and thus define the material protection measures, sometimes he has not answered and in others he has refused because he stated that he did not trust the DPPS officers. It was reported that as of November 16, 2014, Mr. Walter Robles is no longer Mr. Castillo Gándara's lawyer, and he is not at risk. Regarding Mr. Castillo, the State indicated that police officers at the service of the beneficiary reported a series of irregularities that evidence the abuse and distortion of the measures. The State indicated that the beneficiary used his security officers as drivers, or for domestic tasks, and sometimes did not inform them when he was going to leave. It was indicated that the situation reached such a point that the security officers filed a complaint with the Public Ministry against Mr. Castillo Gándara.

7. Finally, on July 24, 2017, the State reported that: (i) on March 23, 2017, Mr. Castillo Gándara underwent a risk assessment that resulted in a "low" risk. Notwithstanding, the beneficiary continued to have a security detail made up of two officers; (ii) during the period from 2012 to July 8, 2017, Mr. Castillo Gándara filed various complaints with the Public Ministry for the crimes of theft and material misrepresentation against private persons; threats, which was rejected because the beneficiary did not appear at the scheduled proceeding; use of information, which has not had any progress, due to the lack of appearance by the beneficiary; among others.

B. Information provided by the representation

8. On February 15, 2013, the beneficiary opposed the lifting of the precautionary measures. The representation indicated that, since 2012, the beneficiary has a well-founded fear that his protection will be withdrawn, and therefore, on December 19, 2012, he lodged a verbal complaint before the Public Ministry against Ms. N., who requested that the measures be lifted in order to initiate proceedings against

the beneficiary for the crime of domestic violence. The beneficiary alleged that Ms. N. was receiving money from a person against whom the beneficiary had filed a complaint. The beneficiary stated that he has been subjected to constant threats and attacks against him after the 2010 attack; however, he does not provide any details.

9. On October 10, 2014, the beneficiary stated that: (i) the security detail assigned to him was replaced and was now in the hands of the National Civil Police, which implies that the personnel are less trained. Additionally, he indicated that a member of the security detail has been removed, and that the weapons from his protection personnel have been taken away; (ii) he has been the target of threats, and a lawyer who was advising him was hired by the person who the beneficiary considers to have made an attempt on his life on multiple occasions; (iii) one of the new officers assigned to the beneficiary's security detail allegedly participated in an attempt on his life in 2007; (iv) on September 16, 2014, the beneficiary purportedly requested that the officers who were in charge of his security be replaced, given that they had published photos of his home and vehicle; (v) on September 16, 2014, a consultation meeting was held with the National Civil Police, in which it was requested that the precautionary measure be supervised and that another member be assigned to his security detail, because it only had three elements to date, and the beneficiary states that the request was not fulfilled; (vi) lawyer Walter Robles reportedly stopped providing his services, and therefore, he is reportedly no longer related to his situation, and does not share his situation. He reported that he was the target of an attack against him that occurred "two weeks ago." He indicated that he was eating in a restaurant, and when he left, an armed person pointed at his head and told him that he would kill him. The beneficiary and the restaurant's security personnel took this person down without the help of the security officer assigned to protect him. He reported the officer that did not help him. The other security officers allegedly turned against him for having denounced a police officer and the beneficiary told them that they should not work with him, as he did not want to be with dissatisfied people. It was indicated that due to this situation the beneficiary did not have any security detail. Therefore, he requested that the State be ordered to pay to hire private security.

10. Lastly, on November 18, 2015; June 21, 2017; September 1, 2017; and August 18, 2021 the representation stated that they were unable to contact any of the beneficiaries of the precautionary measures, and did not provide updated information on their situation.

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

11. 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 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 Commission's Rules of Procedure. In accordance with this Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid irreparable harm to persons.

12. The Inter-American Commission and the Inter-American Court of Human Rights have established repeatedly that precautionary and provisional measures have a dual nature, both protective and precautionary. Regarding their protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, these measures have the purpose of preserving legal situations while they are under consideration by the IACHR. In the process of reaching a decision, 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 of 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.

13. With respect to the foregoing, Article 25(7) of the Commission’s Rules of Procedure establish that “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 assess whether the serious and urgent situation and possible irreparable harm that caused the adoption of the precautionary measures still 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.

14. 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 rigorous evaluation.³ In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.⁴ 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.⁵

15. In the matter at hand, the Commission recalls that the precautionary measures were granted in 2004 in light of the available information, which indicated that Mr. Rafael Castillo Gándara had been followed and threatened by an officer of the Public Ministry. The measures included his then lawyer, Mr. Walter Robles. After the precautionary measures were granted and during the Commission’s follow-up, the State responded to the requests for information made and indicated that it had adopted, inter alia, the following measures: (i) investigations; (ii) consultation or work meetings; (iii) risk assessments; (iv) individualized security details; and (v) perimeter security (see *supra* paras. 5-7). The State also reported that Mr. Robles no longer acts as Mr. Castillo’s lawyer since 2014. In 2017, it was also reported that a risk study was carried out on Mr. Castillo, which yielded a “low” risk. However, the State indicated that it continued to provide security (see *supra* para. 7).

16. In the terms of Article 25(9) of the Rules of Procedure, the Commission observes that the State requested the lifting of these precautionary measures on November 23, 2012, on February 10, 2016, and on July 24, 2017. In the same way, the Commission repeatedly requested information from the representation, informing it that it would analyze whether the measures should remain in force pursuant to Article 25 of its Rules of Procedure. In this regard, information was requested on October 1, 2015 and July 29, 2021. Following the requests to lift the measures made by the State, which were repeated for approximately 9 years, and despite the Commission’s requests for information during that same period, it is observed that the representation has not provided concrete, detailed, and updated information on the beneficiaries’ situation. In this regard, the Commission also observes that the representation itself has

³ 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

⁴ *Ibid.*

⁵ *Ibid.*

indicated that it has no contact with the beneficiaries. This argument has been repeated over time, at least between 2015 and 2021.

17. In addition to the foregoing assessment, the Commission notes that the most recent facts available to the Commission date from 2014 (see *supra* para. 9). In this sense, despite various requests and proceedings with the parties, the Commission has not had elements of assessment regarding any alleged facts, for approximately seven years. Additionally, 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.⁶ By the same token, the representatives of the beneficiaries that want the measures to continue must present evidence of any reasons why.⁷ Similarly, Article 25, subparagraph 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.

18. In this matter, the Commission does not have any response from the representation that includes the necessary elements to continue assessing a situation presenting a risk pursuant to Article 25 of the Rules of Procedure. Based on the analysis carried out and in view of the State's repeated request to lift the measures, the Commission understands that the factual circumstances that motivated the granting of these precautionary measures have changed significantly. Thus, the Commission deems that according to the available information, it is not possible to currently identify any situation that fulfills the requirements of Article 25 of the Rules of Procedure, while approximately more than seven years have gone by with no information from the representation, despite being aware that the State has requested the lifting thereof. In view of the above, and taking into account the exceptional and temporary nature of precautionary measures,⁸ the Commission deems it appropriate to lift these precautionary measures.

V. DECISION

19. The Commission decides to lift the precautionary measures granted to Rafael Castillo Gándara and Walter Robles, in Guatemala.

20. 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 Guatemala to respect and guarantee the rights recognized therein, including the life and personal integrity of the beneficiaries.

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

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

23. Approved on December 1, 2021, by: Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay; Esmeralda

⁶ Ibid.

⁷ Ibid.

⁸ 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

Arosemena de Troitiño; and Joel Hernández García, members of the IACHR.

Marisol Blanchard
Assistant Executive Secretary