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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 16/2023**

Precautionary Measures No. 141-14

Manuel Escalona Sánchez, Wilfredo Matos Gutierrez and Ortello Abrahante Bacallao  
regarding the Bahamas  
April 1<sup>st</sup>, 2023  
Original: English

**I. SUMMARY**

1. The Inter-American Commission on Human Rights (IACHR) decides to lift the precautionary measures in favor of Manuel Escalona Sánchez, Wilfredo Matos Gutierrez and Ortello Abrahante Bacallao regarding the Bahamas. At the time of taking the decision, the Commission observes that the parties have not provided information since the granting of the precautionary measure, despite several requests from the Commission. The Commission regrets that the parties have never complied with the requests for information, particularly in face of the seriousness and urgency of the matter. The IACHR recalled that the State must comply with the corresponding obligations under the American Declaration despite the lifting of these precautionary measures, especially with regards to the rights of migrants and asylum seekers.

**II. BACKGROUND INFORMATION**

2. On June 30<sup>th</sup>, 2014, the Inter-American Commission on Human Rights granted precautionary measures in favor of Manuel Escalona Sánchez, Wilfredo Matos Gutierrez and Ortello Abrahante Bacallao in the Bahamas. The beneficiaries are Cuban nationals who were at imminent risk of deportation allegedly without due analysis of their risk upon return to Cuba, in alleged violation of the principle of *non-refoulement*<sup>1</sup>. The present precautionary measure is connected to the petition P-543-14.

3. In granting the precautionary measure the Commission observed that the representatives alleged that the State of Bahamas had “engaged on the collective deportation of Cuban nationals without previous notification [...] and without adequate safeguards against refoulement”. Accordingly, on April 7<sup>th</sup>, 2014, at least 21 Cuban nationals had been deported and a group of 36 detainees were at risk of “forced repatriation anytime”<sup>2</sup>. Regarding the beneficiaries, the representatives indicated that they were at risk upon their return to Cuba due to their fear of being persecuted and detained. Manuel Escalona Sánchez indicated that he was declared a military deserter for his refusal to participate in the Cuban incursion in Angola; Wilfredo Matos Gutierrez identified as opposition to the government, alleging that his family has been persecuted and imprisoned; Ortello Abrahante Bacallao was a high-ranking military officer whose decision to leave the country carried “terrible consequences”, indicating his family was being followed, detained and interrogated as a result of his departure.

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<sup>1</sup> IACHR. [Resolution No. 19/14](#). PM 141-14 - Manuel Escalona Sánchez, Wilfredo Matos Gutiérrez, and Ortelio Abrahante Bacallao, Bahamas. June 30<sup>th</sup>, 2014.

<sup>2</sup> Ibid, para. 5.

4. In addition, the representative, Annette Martinez Orabona, indicated that the beneficiaries were submitted to inadequate detention conditions at the Carmichael Detention Center. Besides not having access to legal counsel and phone calls, persons deprived of liberty at this facility did not had access to medical care, were submitted to unsanitary conditions, such as pest infestation, lacked access to sufficient food and potable water, as well as suffered from overcrowding. In this context, Mr. Manuel Escalona Sánchez had been beaten in one instance and required hernia surgery. Mr. Wilfredo Matos Gutierrez had developed skin abnormalities during in detention.

5. After analyzing the allegations of fact and law, the Commission requested the State of Bahamas to: refrain from deporting Manuel Escalona Sánchez, Wilfredo Matos Gutierrez and Ortello Abrahante Bacallao, in order to protect their lives and personal integrity. Additionally, to provide the beneficiaries a legal remedy observing the principle of non-refoulement to determine if they would have the right to asylum and provide information on its outcome in order for the IACHR to monitor the need to maintain or lift the precautionary measure.

### **III. RELEVANT INFORMATION PROVIDED DURING THE TIME THE PRECAUTIONARY MEASURE WAS IN FORCE**

6. During the time the precautionary measure was in force, the Commission has not received information from the parties, despite several requests. The IACHR requested information to the representatives on January 12<sup>th</sup>, 2015, September 13<sup>th</sup>, 2022, March 6<sup>th</sup>, 2023; and from the State on January 12<sup>th</sup>, 2015, and September 13<sup>th</sup>, 2022.

7. The Commission has also not received information from the representatives in the scope of the connected petition P-543-14, through which it sent communications to them on July 31<sup>st</sup>, 2018, and July 31<sup>st</sup>, 2020. The IACHR informed the representatives of the archiving of the petition on December 10<sup>th</sup>, 2021.

8. On March 6<sup>th</sup>, 2023, in compliance with item 9 of Article 25 of the IACHR's Rules of Procedure, the Commission requested the representatives to provide updated information regarding the implementation of the present precautionary measures in order to evaluate if the Article 25 requirements were still in force. The Commission has not received a reply to present date.

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

9. 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.

10. 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.<sup>3</sup> 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 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.

11. With respect to the foregoing, Article 25(7) of the Commission’s Rules of Procedure establishes that “[t]he decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions.” Article 25(9) sets forth that “[t]he 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 shall assess whether the serious and urgent situation and the risk of irreparable harm that caused the adoption of the precautionary measures persist. Furthermore, it shall consider whether there are new situations that may comply with the requirements set forth in Article 25 of the Rules of Procedure.

12. The present precautionary measure was granted to protect the right to life and integrity of the beneficiaries due to their alleged risk of deportation without due analysis of their risk upon return to Cuba, in alleged violation of the principle of *non-refoulement*. The PM request highlighted both an alleged “collective deportation of Cuban nationals without previous notification [...] and without adequate safeguards against refoulement”, as well as inadequate detention conditions in the detriment of the beneficiaries. The Commission adverts the seriousness of such allegations and regrets that, while the PM was in force, the parties have not provided information on the situation of the beneficiaries and implementation of the precautionary measures.

13. The IACHR emphasizes that the lack of a response prevents the Commission to learn if the State is implementing measures to protect the beneficiary, its adequacy and sufficiency, as well as it precludes the State to present information that could question the allegations put forward by the beneficiary. Furthermore, the Commission recalls that, according to the Inter-American Court, failure to

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<sup>3</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. [Matter 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.

comply with the duties 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 situations<sup>4</sup>. 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 falls<sup>5</sup>.

14. In the present matter, in light of the lack of updated information provided by the parties, the Commission adverts that it is not possible to identify any situation that currently fulfills the requirements of Article 25 of the Rules of Procedure. Particularly, the IACHR lacks the elements of assessment to conclude that the beneficiaries are currently in a situation of “imminent” risk in accordance with Article 25. To indicate that the Commission takes into consideration that while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard of review, keeping such measures in force requires a more rigorous evaluation<sup>6</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>7</sup>.

15. Likewise, the Commission takes note that the petition P-543-14 has been archived on December 10<sup>th</sup>, 2021. Consequently, it understands that the precautionary nature of the present measure is no longer applicable.

16. Considering the above, the Inter-American Commission decides to lift the present precautionary measures. Furthermore, it notes that the PM 535-14, granted on February 13<sup>th</sup>, 2015, through Resolution 4/15<sup>8</sup> in favour of all Persons in Immigration Detention at Carmichael Detention Center remains in force. The Commission will continue its supervisory role in the framework of said precautionary measures.

17. Lastly, and as noted by the Inter-American Court in various matters<sup>9</sup>, 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.

## V. DECISION

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<sup>4</sup> 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; I/A Court H.R. [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.

<sup>5</sup> Ibid.

<sup>6</sup> I/A Court H.R., [Provisional Measures regarding Mexico](#). Order of February 7, 2017, para. 16 and 17.

<sup>7</sup> Ibid.

<sup>8</sup> IACHR. Resolution 4/15. PM 535-14 Persons in Immigration Detention at Carmichael Road Detention Center, Bahamas. February 13<sup>th</sup>, 2015.

<sup>9</sup> 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; I/A Court H.R. [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.

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18. The Commission decides to lift the precautionary measures granted in favor of Manuel Escalona Sánchez, Wilfredo Matos Gutierrez and Ortello Abrahante Bacallao regarding the Bahamas.

19. The Commission instructs the Executive Secretariat of the IACHR to notify the State of the Bahamas and the representatives of this Resolution.

20. Approved on April 1<sup>st</sup>, 2023, by Margarette May Macaulay, President; Esmeralda Arosemena de Troitiño, First Vice-President; Roberta Clarke, Second Vice-President; Julissa Mantilla Falcón; Edgar Stuardo Ralón Orellana; and Carlos Bernal Pulido, members of the IACHR.

Jorge Meza Flores  
Assistant Executive Secretary