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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 43/2023**

Precautionary Measure No. 532-23  
David Estiven Fernández Soler regarding Colombia<sup>1</sup>  
July 28, 2023  
Original: Spanish

**I. INTRODUCTION**

1. On July 10, 2023, the Inter-American Commission on Human Rights (“the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures filed by the Nydia Erika Bautista Foundation for Human Rights (“the applicants” or “the requesting party”), urging the Commission to require that the State of Colombia (“Colombia” or “the State”) adopt the necessary measures to protect the rights of David Estiven Fernández Soler (“the proposed beneficiary”). According to the request, the proposed beneficiary is a social activist and has been missing since June 7, 2023.

2. In accordance with Article 25(5) of its Rules of Procedure, the Commission requested information from both parties on July 14, 2023, receiving a response from the applicants on July 15, 2023, and from the State on July 18, 2023.

3. Upon analyzing the submissions of fact and law furnished by the parties, the Commission considers that the information presented shows *prima facie* that the proposed beneficiary is in a serious and urgent situation, given that his rights to life and personal integrity are at risk of irreparable harm. Therefore, the IACHR requests that the State of Colombia: a) adopt the necessary measures to determine Mr. David Estiven Fernández Soler’s situation and whereabouts, in order to protect his rights to life and personal integrity; and b) report on the actions taken to investigate the alleged facts that gave rise to the adoption of this resolution, so as to prevent such events from reoccurring.

**II. SUMMARY OF FACTS AND ARGUMENTS**

**A. Information provided by the applicants**

4. This request was filed in favor of David Estiven Fernández Soler, 24 years old, who has allegedly been missing since June 7, 2023. The proposed beneficiary is allegedly a social activist, appointed as Youth Counselor for the municipal district (*localidad*) of Kennedy in January 2023. During 2021, the proposed beneficiary was allegedly a part of *Primera Línea* (Front Line) from the area of the Portal Américas station in the city of Bogotá, “a role that had caused certain risks because he belonged to this group that defended protests.”

5. According to the request, on July 26, 2022, the proposed beneficiary appeared at the Nydia Erika Bautista Foundation for Human Rights “reporting very serious acts of persecution and threats made against him by paramilitary groups,” by which the Foundation filed a criminal complaint for threats, which is allegedly active, handled by the Local Prosecutor’s Office 514.

6. On November 26, 2022, the proposed beneficiary allegedly left his home, where he resides with his mother, Angelica Soler Pabón, without mentioning where he was going. That same day at night, he

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<sup>1</sup> In accordance with Article 17(2) of the IACHR Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the debate and deliberation of this matter.

allegedly called his mother to “inform her that he had sent her money.” From that moment on, the proposed beneficiary’s whereabouts were unknown, and his mother allegedly sought someone to access her son’s computer. They allegedly identified that the last place where there was activity was in the hamlet of Las Damas, in San Vicente Caguán, Caquetá. Ms. Soler Pabón reportedly stated that her son never left without saying when he would return, much less stop communicating and maintaining his activity on social media.

7. For this reason, the proposed beneficiary’s mother reportedly went to forensic medicine, where she was assigned a number from the Missing Persons and Corpses Network Information System (SIRDEC). On that occasion, she also filed a complaint, without having received any subsequent information. On December 13, 2022, an urgent action request was reportedly submitted to the UN Committee.

8. The applicants stated that “subsequently a video went viral on social media of David Estiven Fernández Soler carrying a rifle and indicating that he had left of his own free will.” Since then, authorities allegedly “assumed that this was the reality and did not communicate with the victim’s mother again.” On April 20, 2023, videos went viral again on social media in which the proposed beneficiary allegedly appeared addressing a community at a meeting in the savannahs of Yará, introducing himself with an alias.

9. On June 7, 2023, Ms. Angelica Soler contacted the Nydia Erika Bautista Foundation, reporting that she had received a call from her son to her cellphone. He allegedly told her that he had escaped from a FARC camp where he was being held, that he had walked all night, and had taken refuge in the Veracruz hamlet. The proposed beneficiary reportedly asked his mother “to contact the Nydia Erika Bautista Foundation to help him because he feared for his life.” He also reportedly said that “he had thought about getting a little closer to San José del Caguán, so he thought about moving on horseback, but he noticed military and FARC checkpoints, and therefore gave up doing so to protect his life.” Furthermore, the Foundation allegedly sent the proposed beneficiary 250,000 pesos to a cellphone registered in the name of D.T., who allegedly confirmed receipt of the money.

10. The Foundation allegedly informed the “International Committee of the Red Cross, the Office of the United Nations High Commissioner for Human Rights in Colombia, the Office of the High Commissioner for Peace, the Ombudsperson’s Office, Peace Brigades International, among others” about the events. The ICRC requested Ms. Soler’s contact information, as well as the number to contact the proposed beneficiary. On that same day, June 7, the ICRC reportedly informed Ms. Soler that they had communicated with her son and had “asked him to move towards the church of the Guacamayas municipality. However, moments later, when they contacted his cellphone again, another individual answered and identified themselves as a member of the FARC guerilla and hung up.” One hour later, the director of the Nydia Erika Bautista Foundation reportedly received a call from D.T., from the same cellphone, who “in a strange tone informs her that he is walking through the mountain. From that moment, there was no longer any communication with either of the two young men.”

11. According to the applicants, D.T. is a young resident in the Veracruz hamlet of the San Vicente del Caguán municipality in Caquetá, “who apparently gave refuge to David Estiven Fernández Soler when he escaped from the camp.” After the proposed beneficiary’s possible recapture by the FARC, the fate or whereabouts of D.T. are also reportedly unknown, “and if the organized armed group took any retaliation against him for having helped David Estiven Fernández Soler.”

12. The request indicates that the proposed beneficiary is allegedly in the hands of dissidents of “the 1st Front or Armando Ríos Front of the FARC-EP, or Iván Mordisco dissidents.” On June 9, 2023, a complaint was filed with the Office of the Attorney General, which requests that it investigate the crimes of forced disappearance and illegal recruitment. Additionally, a request was submitted to activate the Urgent Search Mechanism. However, to date “the results of the actions taken are unknown.”

13. On July 15, 2023, the applicants indicated that, according to the Office of the Attorney General, the status of the case appears as “inactive,” “reason inactive for accumulation of procedural connection.” It is presumed that the report for the crime of forced disappearance of July 13, 2023, was combined with the investigation carried out by the Specialized Prosecutor’s Office 88 of the Prosecutor’s Regional Office in Bogotá, initiated after the proposed beneficiary’s first disappearance. In addition, the applicants indicated that the actions taken by the Prosecutor’s Office for the search and whereabouts of the victim are unknown, as is the procedure issued for the request to activate the Urgent Search Mechanism.

#### **B. Response from the State**

14. On July 18, 2023, the State reported “the actions and mechanisms implemented by the institutionality regarding the search, aimed at clarifying the whereabouts of Mr. David Estiven Fernández Soler, as well as the events that led to his disappearance.” Furthermore, the State indicated that the Commission for the Search of Disappeared Persons (CBPD) promotes coordinated inter-institutional actions that translate into the implementation of investigation and search mechanisms and protocols related to the crime of forced disappearance, noting that its mandate allows for “intersectoral cooperation and the synergy of efforts in favor of the development of its functions.”

15. Regarding the proposed beneficiary’s situation, the State indicated that on June 16, 2023, the High Commissioner for Human Rights filed a request for urgent action registered by the Committee on Enforced Disappearances, with regard to the proposed beneficiary’s alleged disappearance. The State reported that it responded to the request on June 30, 2023.

16. Additionally, the CBPD allegedly reported that, within the framework of the National Search Plan’s implementation, it received communication requesting urgent actions regarding the proposed beneficiary’s disappearance. According to the State, after consulting the Missing Persons and Corpses Network Information System (SIRDEC), the CBPD indicated that, on December 1, 2022, the proposed beneficiary’s mother allegedly went to the National Institute of Legal Medicine and Forensic Sciences, by which the following was carried out: i. an alphanumeric search from the date of disappearance, with a negative result; ii. interview to technical cross-referencing, does not review DRB photographs, there are no candidates; iii. she was informed that when the person appears she must report by telephone to this office and must appear with the disappeared person before the authority to complete the certificate of survival and record the appearance; iii. she was referred to the judicial authority on duty.

17. The CBPD also reported that on December 6, 2022, again they conducted technical cross-referencing; an alphabetical search and by document number was carried out in the SIRDEC, SICOMAIN, and SIIPF information systems with a negative result. Subsequently, variables were cross-referenced at the national level beginning on the disappearance date of 11/26/2022 based on age, sex, and height criteria, which yielded three candidates with an evidently negative result. The State indicated that it would continue to send the Commission information provided by the competent authorities regarding the actions carried out to find the proposed beneficiary.

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

18. The precautionary measures mechanism is part of the Commission’s function of overseeing compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States. These general functions are set forth in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the Statute of the IACHR. Moreover, the precautionary measures mechanism is enshrined in Article 25 of the Rules of Procedure. In accordance with this Article, the IACHR grants precautionary measures in urgent and serious situations in which these measures are necessary to avoid

irreparable harm to persons or to the subject matter of a petition or case before the organs of the inter-American system.

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.<sup>2</sup> Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.<sup>3</sup> To do this, it is necessary to assess the problem raised, the effectiveness of state actions to address the situation described, and how vulnerable the persons proposed as beneficiaries would be left in case the measures are not adopted.<sup>4</sup> Regarding their precautionary nature, these measures have the purpose of preserving legal situations while under the consideration of the IACHR. The purpose of precautionary measures is to preserve the rights at risk until the petition pending before the inter-American system is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures enable the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations.<sup>5</sup> 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. In analyzing those requirements, the Commission reiterates 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.<sup>6</sup>

<sup>2</sup> See in this regard: I/A Court H.R. [Matter of the Yare I and Yare II Capital Region Penitentiary Center](#). Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. [Case of Carpio Nicolle et al. v. Guatemala](#). Provisional Measures. Order of July 6, 2009, considerandum 16.

<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 [only in Spanish].

<sup>4</sup> See in this regard: 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 [only in Spanish]; 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 9; I/A Court H.R. [Matter of the Criminal Institute of Plácido de Sá Carvalho](#). Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of February 13, 2017, considerandum 6 [only in Spanish].

<sup>5</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 7; I/A Court H.R. [Matter of “El Nacional” and “Así es la Noticia” newspapers](#). Provisional Measures regarding Venezuela. Order of the Court of November 25, 2008, considerandum 23; I/A Court H.R. [Matter of Luis Uzcátegui](#). Provisional Measures regarding Venezuela. Order of the Court of January 27, 2009, considerandum 19.

<sup>6</sup> In this regard, for instance, referring to provisional measures, the Inter-American Court has indicated that this standard requires a minimum degree of detail and information to assess, *prima facie*, a situation of risk and urgency. I/A Court H.R., Matter of

Similarly, the Commission recalls that, in this proceeding, it is not called upon to analyze alleged human rights violations in light of the American Convention and the applicable standards. Nor, by its own mandate, does it correspond to the Commission to individualize the criminal liability of specific persons in light of the alleged facts. The Commission establishes that the analysis it will carry out below focuses exclusively on the requirements established in Article 25 of its Rules of Procedure, which can be done without making any determinations on the merits.

21. As a preliminary aspect, the Commission observes that, according to the information provided by the State, on June 16, 2023, the High Commissioner for Human Rights filed a request for urgent action registered by the Committee on Enforced Disappearances. In this regard, the Commission recalls that Article 25 of its Rules of Procedure does not consider the legal concept of international *lis pendens* (pending litigation) to be an impediment to pronouncing on a request for precautionary measures, contrary to the petition and case system.<sup>7</sup> In this sense, the Commission observes that the *lis pendens* exception does not apply to this matter. On the other hand, the steps taken by other international bodies, such as those of the aforementioned Committee, may in fact provide important context or indicators to take into account when analyzing the seriousness requirement.<sup>8</sup>

22. The IACHR recalls that, according to Article 25(6) of its Rules of Procedure, the Commission “shall take into account [the] context” in which a request is made. Accordingly, the Commission has deemed that the assessment of the context in which the facts occur informs, illustrates, or guides the verification of the requirements of Article 25 of the Rules of Procedure. The IACHR recalls that, recently, it repudiated the murder of indigenous adolescents by an illegal armed group in the department of Caquetá, the last known location of the proposed beneficiary.<sup>9</sup> In addition, the IACHR draws attention to the fact that the departments of Caquetá, Putumayo, and Amazonas are areas characterized by scarce State presence, a context in which illegal armed groups have increased their territorial presence.<sup>10</sup>

23. Based on the information available in this matter, in relation to the *seriousness* requirement, the Commission takes into account that the proposed beneficiary initially disappeared on November 26, 2022, and from June 7, 2023, to the present date, there is no information on the fate or whereabouts of David Estiven Fernández Soler after he communicated by telephone with his mother and the International Committee of the Red Cross (ICRC) from the hamlet of Veracruz, Caquetá.

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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.

<sup>7</sup> In this regard, Article 46 of the American Convention on Human Rights establishes that “[a]dmission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: [a, b] c) that the subject of the petition or communication is not pending in another international proceeding for settlement [...]”

<sup>8</sup> For example, in the matter of Santiago Maldonado regarding Argentina, the Commission assessed the existence of a pronouncement by the United Nations Committee on Enforced Disappearances, in which the Committee expressed “its serious concern for the physical and psychological integrity of Mr. Santiago Maldonado [...]” IACHR, Santiago Maldonado regarding Argentina (PM-564-17), resolution 32/2017 of August 22, 2017, para. 15, available [in Spanish] at <https://www.oas.org/es/cidh/decisiones/pdf/2017/32-17mc564-17-ar.pdf>. In the matter of José Fernando Choto Choto et al. regarding El Salvador, the Commission took into consideration that a “prompt intervention letter” was reportedly issued by the United Nations Working Group on Enforced and Involuntary Disappearances about the beneficiaries’ alleged disappearance. IACHR, José Fernando Choto Choto et al. regarding El Salvador (PM- 240-15), resolution 34/2015 of September 28, 2015, para. 17, available [in Spanish] at <http://www.oas.org/es/cidh/decisiones/pdf/2015/mc240-15-es.pdf>; additionally, in the matter of Daniel Ramos Alfaro regarding Mexico, the IACHR took into account the existence of a decision on the alleged facts issued by the United Nations Committee on Enforced Disappearances on December 2, 2013. IACHR, Daniel Ramos Alfaro regarding Mexico (PM-453-13), resolution 3/2014 of February 20, 2014, para. 9, available [in Spanish] at <https://www.oas.org/es/cidh/decisiones/pdf/2014/MC453-13-ES.pdf>.

<sup>9</sup> IACHR, [IACHR Condemns Murders of Indigenous Adolescents of the Murui-Muina People by an Illegal Armed Group in Colombia](#), June 15, 2023.

<sup>10</sup> *Ibid.*

24. According to the information available, on June 7, 2023, the ICRC contacted the proposed beneficiary and asked him to move toward the church in Guacamayas. However, when they called his cell phone again, someone who identified himself as a member of the FARC guerrillas answered and hung up. An hour later, the director of the Nydia Erika Bautista Foundation reportedly received a call from a young man who possibly sheltered the proposed beneficiary in Veracruz. He told her “in a strange tone” that the proposed beneficiary “is walking in the mountains.” The requesting party indicated that the proposed beneficiary is allegedly in the hands of dissidents of the 1st Front or Armando Ríos Front of the FARC-EP or Iván Mordisco dissidents.

25. David Estiven Fernández Soler’s disappearance was initially reported on December 1, 2022, when he first disappeared. The situation was allegedly reported to the United Nations Committee through an Urgent Action request on December 13, 2022. After the proposed beneficiary contacted his mother on June 7, 2023, the events were also allegedly reported to the International Committee of the Red Cross, the Office of the United Nations High Commissioner for Human Rights in Colombia, the Office of the High Commissioner for Peace, the Ombudsperson’s Office, and Peace Brigades International, among others. On June 9, 2023, a new complaint and request to activate the Urgent Search Mechanism were filed before the Office of the Attorney General.

26. For its part, after requesting information from the State pursuant to Article 25 of the Rules of Procedure, the State indicated proceedings that were reportedly carried out by the National Institute of Legal Medicine and Forensic Sciences between December 1 and 6, 2022. It also indicated that, on June 30, 2023, it had submitted information to the Committee on Enforced Disappearances regarding the proposed beneficiary’s alleged disappearance, without providing further details.

27. The Commission takes note of the information provided by the State. However, it observes that there is no information regarding the investigative measures that have reportedly been adopted to determine the proposed beneficiary’s whereabouts. Similarly, no details have been provided on whether the Urgent Search Mechanism has been effectively activated—with the verification of its activation status currently in process—nor on the actions taken in that regard, or any indication that the mechanism has allowed him to be located. The Commission understands that it is not contested that the proposed beneficiary has been missing since June 7, 2023, as reported by the requesting party. Although it is not for the IACHR to qualify the domestic investigations and processes in this procedure, it notes that actions aimed at determining the whereabouts or fate of a disappeared person are directly related to the need to prevent harm from occurring to their rights and that, until their situation has been clarified, the proposed beneficiaries are allegedly at serious risk.<sup>11</sup> At the same time, the Commission observes the allegation made by the proposed beneficiary’s mother and the requesting party that, after filing corresponding complaints, the results of the actions taken are unknown to date. In light of the foregoing considerations and the *prima facie* standard, the Commission considers that David Estiven Fernández Soler’s rights to life and personal integrity are at serious risk to the extent that there has been no news about his fate or whereabouts from June 7, 2023, to date.

28. Regarding the requirement of *urgency*, the Commission deems that it has also been met, to the extent that the passage of time without establishing his whereabouts is likely to generate greater impacts on the proposed beneficiary’s rights to life and personal integrity. In this sense, more than a month after the proposed beneficiary’s disappearance, no known investigation is underway to locate him.

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<sup>11</sup> I/A Court H.R. Order of the Inter-American Court of Human Rights of May 26, 2010, Provisional Measures regarding the United States of Mexico, Matter of Alvarado Reyes et al., para. 9. See also: IACHR. Resolution 43/2020, Precautionary Measure No. 691-20, Facundo José Astudillo Castro regarding Argentina. August 1, 2020, para. 25.

29. Regarding the requirement of *irreparable harm*, the Commission considers that it has been met, since the potential impact on the rights to life and personal integrity constitutes the maximum situation of irreparable harm.

#### **V. BENEFICIARY**

30. The Commission declares Mr. David Estiven Fernández Soler the beneficiary, who is duly identified in this procedure under the terms of Article 25 of the Rules of Procedure.

#### **VI. DECISION**

31. The Inter-American Commission on Human Rights concludes that the present matter meets *prima facie* the requirements of seriousness, urgency, and irreparable harm contained in Article 25 of its Rules of Procedure. Accordingly, the IACHR requests that Colombia:

- a) adopt the necessary measures to determine Mr. David Estiven Fernández Soler's situation and whereabouts, in order to protect his rights to life and personal integrity; and
- b) report on the actions taken to investigate the alleged facts that gave rise to the adoption of this resolution, so as to prevent such events from reoccurring.

32. The Commission requests that the State of Colombia inform, within a period of 15 days from the date of this resolution, on the adoption of the precautionary measures requested and to update such information periodically.

33. The Commission emphasizes that, in accordance with Article 25(8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute prejudgment of any violation of the rights protected in the applicable instruments.

34. The Commission instructs its Executive Secretariat to notify this resolution to the State of Colombia and the applicants.

35. Approved on July 28, 2023, by Margarete May Macaulay, President; Roberta Clarke, Second Vice-President; Joel Hernández García; and Julissa Mantilla Falcón, members of the IACHR.

Tania Reneaum Panszi  
Executive Secretary